

No. 15813 ✓

United States
Court of Appeals
for the Ninth Circuit

MANUEL C. BLAS, and THE ESTATE OF
JOSE MARTINEZ TORRES,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the District Court of Guam,
Territory of Guam

FILED

JUN - 4 1958

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

REYES & LAMORENA,

P. O. Box 609,
Agana, Guam,

Attorneys for Appellant.

PERRY W. MORTON,

Assistant U. S. Attorney General,

ROGER P. MARQUIS,

ELIZABETH DUDLEY,

Attorneys,
Department of Justice,
Washington 25, D. C.,

H. G. HOMME, JR.,

United States Attorney,

OLEN W. BURNETT,

Assistant U. S. Attorney,
P. O. Box 308,
Agana, Guam,

Attorneys for Appellee.

In the Superior Court of Guam
Marianas Islands

Civil No. 6-49

Naval Government of Guam, Plaintiff,

vs.

380,438 square meters of land, more or less, situated
in the Municipality of Barrigada, Island of
Guam, Marianas Islands and the Estate of
Antonio Ingay Bayona, deceased, et al.,
Defendants.

DECLARATION OF TAKING

I, C. A. Pownall, Governor of Guam, do hereby
declare that:

I.

The land hereinafter described is taken under
and in accordance with the provisions of Sections
1237 to 1258, inclusive, as amended, of the Code of
Civil Procedure of Guam.

II.

The public use for which said land is taken is the
procurement of a suitable permanent site for the
location of the Village of Barrigada in the Municipality of Barrigada, as an aid to and in the furtherance of the program for the rehabilitation of the Guamanian people and the economy of Guam. That said land is suitable and necessary therefor, has been selected by me for said purpose and is re-

quired for immediate use in order to carry out such purpose.

III.

That the land subject of this proceeding is situated in the Municipality of Barrigada, Island of Guam, Marianas Islands, as delineated on Land and Claims Commission Drawing No. P-360, dated 22 December 1948 and entitled "U. S. Naval Government of Guam, M. I., Land & Claims Commission, Barrigada Village Boundary, Land Square 18, Section 2, Municipality of Barrigada," and is more particularly bounded and described as follows:

From Triangulation Station "Reservoir", having Land and Claims Commission (1945) grid coordinates 49,727.55 meters North and 57,025.07 meters East, South 83 degrees 56 minutes 14 seconds West for a distance of 1,608.47 meters to a corner marked No. 1, which is the point or place of beginning, said corner having Land and Claims Commission (1945) grid coordinates 49,557.67 meters North and 55,425.60 meters East; thence running South 12 degrees 20 minutes 44 seconds West for a distance of 288.11 meters to a corner marked No. 2; which is also a point of curvature; thence running along the arc of curve for a distance of 217.12 meters to a corner marked No. 3, which is also a point of tangency, curve data being central angle 20 degrees 49 minutes 35 seconds radius 597.33 meters; thence running South 81 degrees 34 minutes 44 seconds West for a distance of 29.71 meters to a corner marked No. 4; thence running South 34 degrees 54 minutes 07 seconds West for a distance of 16.28

meters to a corner marked No. 5; thence running South 89 degrees 31 minutes 37 seconds West for a distance of 269.15 meters to a corner marked No. 6; thence running North 00 degrees 07 minutes 30 seconds East for a distance of 45.00 meters to a corner marked No. 7; thence running North 88 degrees 52 minutes 23 seconds East for a distance of 25.26 meters to a corner marked No. 8; thence running North 00 degrees 08 minutes 19 seconds East for a distance of 113.53 meters to a corner marked No. 9; thence running North 89 degrees 25 minutes 22 seconds West for a distance of 122.58 meters to a corner marked No. 10; thence running South 03 degrees 39 minutes 44 seconds West for a distance of 49.83 meters to a corner marked No. 11; thence running North 88 degrees 05 minutes 03 seconds West for a distance of 74.21 meters to a corner marked No. 12; thence running South 00 degrees 56 minutes 44 seconds West for a distance of 61.90 meters to a corner marked No. 13; thence running North 89 degrees 45 minutes 38 seconds West for a distance of 37.91 meters to a corner marked No. 14; thence running South 00 degrees 06 minutes 50 seconds West for a distance of 18.14 meters to a corner marked No. 15; thence running South 89 degrees 51 minutes 46 seconds West for a distance of 123.40 meters to a corner marked No. 16; thence running North 00 degrees 04 minutes 51 seconds West for a distance of 268.10 meters to a corner marked No. 17; thence running North 29 degrees 31 minutes 41 seconds West for a distance of 81.06 meters to a corner marked No. 18;

thence running North 85 degrees 29 minutes 49 seconds West for a distance of 60.48 meters to a corner marked No. 19; thence running North 02 degrees 09 minutes 19 seconds East for a distance of 58.37 meters to a corner marked No. 20; thence running North 85 degrees 40 minutes 31 seconds East for a distance of 165.60 meters to a corner marked No. 21; thence running North 01 degree 15 minutes 05 seconds West for a distance of 88.14 meters to a corner marked No. 22; thence running North 07 degrees 15 minutes 43 seconds West for a distance of 165.20 meters to a corner marked No. 23; thence running North 21 degrees 10 minutes 26 seconds East for a distance of 48.74 meters to a corner marked No. 24; thence running South 68 degrees 51 minutes 59 seconds East for a distance of 141.25 meters to a corner marked No. 25; thence running South 67 degrees 42 minutes 38 seconds East for a distance of 290.62 meters to a corner marked No. 26 which is also a point of curvature; thence running along the arc of curve for a distance of 124.11 meters to a corner marked No. 27, which is also a point of tangency, curve data being central angle 09 degrees 57 minutes 45 seconds, radius 713.79 meters; thence running South 77 degrees 40 minutes 23 seconds East for a distance of 136.12 meters to the corner marked No. 1, which is the point or place of beginning.

The total area contained herein is 380,438 square meters.

There is specifically excepted from the total land area of 380,438 square meters, more or less, as

above set forth and as shown in Exhibit "A", all lands or interests therein owned by the United States of America or the Naval Government of Guam, leaving, after said exception, an area of 368,561 square meters of land, more or less.

IV.

The estate taken for said public use is the fee simple title in and to said land.

V.

A copy of Land and Claims Commission Drawing No. P-360, dated 22 December 1948 and entitled, "U. S. Naval Government of Guam, M. I., Land & Claims Commission, Barrigada Village Boundary, Land Square 18, Section 2, Municipality of Barrigada" showing the land taken is attached hereto as Exhibit "A" and made a part hereof as though set forth at length.

VI.

The sum estimated by me as just compensation for said land, with all buildings and improvements thereon and all appurtenances thereto, and including any and all interests hereby taken in said tracts is Ten Thousand and No/100 Dollars (\$10,000.00), which sum I deposit herewith in the registry of the said Court for the use and benefit of the person or persons entitled thereto. I am of the opinion that the ultimate award for the taking of such land will be within the limits prescribed by law as the price to be paid therefor.

In witness whereof I have signed this Declara-

tion of Taking this 11th day of April, 1949, in the Municipality of Agana, Island of Guam, Marianas Islands.

/s/ C. A. POWNALL,
Governor of Guam.

[Endorsed]: Filed April 11, 1949.

[Title of Superior Court and Cause.]

COMPLAINT IN CONDEMNATION

The Plaintiff, the Naval Government of Guam, by Harold W. McKinney, Attorney General of Guam, and Emil G. Friedlander, Special Attorney for the Naval Government of Guam, acting under the instructions and at the direction of the Governor of Guam, for cause of action against the above named defendants, alleges as follows:

I.

That this proceeding is instituted and the land hereinafter described is taken and condemned pursuant to and under the provisions and authority of, and for the uses and purposes authorized by, the provisions of Sections 1237 to 1258 inclusive, as amended, of the Code of Civil Procedure of Guam.

II.

That the land hereinafter described has been selected by the Governor of Guam as the permanent site of the Village of Barrigada as an aid to and in the furtherance of the program for the

rehabilitation of the Guamanian people and the economy of Guam, and is sought to be taken and condemned for said purpose and use, and is suitable and necessary therefor; that said use of the land constitutes a public use, and said land is required for immediate use in order to carry out said purpose.

III.

That the land subject of this proceeding is situated in the Municipality of Barrigada, Island of Guam, Marianas Islands, as delineated on Land and Claims Commission Drawing No. P-360, dated 22 December 1948 and entitled, "U. S. Naval Government of Guam, M. I., Land & Claims Commission, Barrigada Village Boundary, Land Square 18, Section 2, Municipality of Barrigada," and is more particularly bounded and described as follows:

[Description of land is the same as set out at pages 4-6 of this printed record.]

The total area contained herein is 380,438 square meters.

There is specifically excepted from the total land area of 380,438 square meters, more or less, as above set forth and as shown in Exhibit "A", all lands or interests therein owned by the United States of America or the Naval Government of Guam, leaving, after said exception, an area of 368,561 square meters of land, more or less.

IV.

That a copy of said Land & Claims Commission Drawing No. P-360 showing the lands above de-

scribed is attached hereto as Exhibit "A" and made a part hereof as though set forth at length.

V.

That Plaintiff is informed and believes, and therefore alleges, that the above described land includes the whole of Lots Numbered 1021A, 1022, 1075, 1076, 1078 and 1079, and parts of Lots Numbered 1021, 1023, 1068, 1069, 1070, 1071, 1073, 1074, 1077, 1080, 1081, 1082, 1084, 1085, 2263, 2264, and 2365, as delineated on Land and Claims Commission Drawing No. P-360.

VI.

That the estate or interest which Plaintiff seeks to take and condemn is the fee simple title in and to the lands above described.

VII.

That the apparent and purported owners of the lands above described are as follows:

Lot No. 1021. Ostensible Owner: Juan Cruz Aguon.

Lot No. 1021-A. Ostensible Owner: Antonio Respicio Perez.

Lot No. 1022. Ostensible Owner: Antonio Respicio Perez.

Lot No. 1023. Ostensible Owner: Ignacio Cruz Muna.

Lot No. 1069. Ostensible Owner: Jose Martinez Torres.

Lot No. 1070. Ostensible Owner: The Estate of Benigno Cruz Mendiola, deceased, represented by Concepcion Franquez Mendiola, Administratrix;

Concepcion Franquez Mendiola, Rosa F. Mendiola, Vicente F. Mendiola, Jose F. Mendiola, Josefina Cruz Cruz as Guardian of the persons and estates of David Mendiola Cruz and Francisco Mendiola Cruz, minor heirs of Maria Mendiola Cruz.

Lot No. 1073. Ostensible Owner: Juana Pangelinan Martinez, Juan Pangelinan Martinez, Joaquin Pangelinan Martinez, Vicente Pangelinan Martinez, Manuel Pangelinan Martinez, Jesus Pangelinan Martinez, Francisco Pangelinan Martinez, Rita Martinez Unpingco, Maria Martinez Flores, Rosa Pangelinan Martinez.

Lot No. 1074. Ostensible Owner: Manuel C. Blas.

Lot No. 1075. Ostensible Owner: Jose Martinez Torres.

Lot No. 1076. Ostensible Owner: Guiseppe D'Angelo.

Lot No. 1077. Ostensible Owner: The Estate of Antonio Ingay Bayona, also known as Antonio Ballona Ingay, deceased, represented by Juan Iglesias Bayona, Administrator; Juan Iglesias Bayona, Susana Bayona Mesa, Maria Bayona Salas, Jose Gonzolo Bayona, Antonio Bayona Bayona, Individually and as Administrator of the Estate of Catalina Iglesias Bayona, and as Guardian of the person and estate of the minor incompetent Disederio Bayona Bayona.

Lot No. 1078. Ostensible Owner: The Estate of Fabian Gomez Idor, deceased, represented by Jose R. Fejerang, Administrator.

Lot No. 1079. Ostensible Owner: Juan Leon Guerrero Concepcion.

Lot No. 1080. Ostensible Owner: Guiseppe D'Angelo.

Lot No. 1081. Ostensible Owner: The Estate of Ramon Cruz Salas, deceased, represented by Antonio Leon Guerrero Salas, Administrator; Antonio L. G. Salas, Ursula Cruz Salas, Matilda Salas Blas.

Lot No. 1082. Ostensible Owner: Julian Lujan Flores.

Lot No. 1083. Ostensible Owner: Ignacio Cruz Muna.

Lot No. 1084. Ostensible Owner: Encarnacion Peraira Cruz, Carlos Peraira Cruz, Regina Peraira Cruz, Candelaria Peraira Cruz, Alejandro Peraira Cruz.

Lot No. 1085. Ostensible Owner: Juan Cruz Aguon.

Lot No. 2263. Ostensible Owner: Juana Pangelinan Martinez, Juan Pangelinan Martinez, Joaquin Pangelinan Martinez, Vicente Pangelinan Martinez, Manuel Pangelinan Martinez, Jesus Pangelinan Martinez, Francisco Pangelinan Martinez, Rita Martinez Unpingco, Maria Martinez Flores, Rosa Pangenilan Martinez.

Lot No. 2264. Ostensible Owner: Guiseppe D'Angelo.

Lot No. 2365. Ostensible Owner: Jose Torres Crisostomo.

Lot No. 1068. Ostensible Owner: Rosa Sablan Camacho, Maria C. Arriola, Manuela S. Camacho, Ana S. Camacho, Gregorio S. Camacho, Jose C. Camacho, Jesus C. Camacho, Rosario S. Camacho,

Estate of Soledad C. Arriola, represented by Vicente F. Arriola, Administrator.

VIII.

That said apparent and purported owners, and each of them, and if any of them be deceased then their respective heirs, executors, administrators, legatees, devisees, trustees and/or assigns, known and unknown, immediate or remote of such deceased, and all other persons, companies, and corporations, known and unknown and their successors and assigns who may have or claim to have any right, title or interest in and to the lands above described of any character whatsoever, are made defendants.

IX.

Wherefore, Plaintiff prays:

1. For Judgment:

(a) Decreeing said lands above described to the extent of title and interest which Plaintiff seeks to acquire by this proceeding are condemned for necessary public use of the Plaintiff as authorized by law; that all of said lands are necessary and suitable therefor;

(b) Decreeing that upon payment into the registry of this Court for the use of the person or persons entitled thereto of the sum estimated to be just compensation for the taking of the lands above described, title to said land is vested in the Naval Government of Guam in fee simple;

(c) Determining the value of the property subject of this proceeding and each separate interest

therein, and directing the payment for each separate interest to the person or persons entitled thereto.

2. For such other and further relief as may be lawful and proper.

NAVAL GOVERNMENT OF
GUAM,

/s/ By HAROLD W. McKINNEY,
Attorney General of Guam.

/s/ By EMIL G. FRIEDLANDER,
Special Attorney for the Naval
Government of Guam.

Verification Attached.

[Endorsed]: Filed April 11, 1949.

In the District Court of Guam
Territory of Guam

Civil No. 6-49

United States of America, Plaintiff,

vs.

380,438 Square Meters of land, more or less, in the Municipality of Barrigada, Island of Guam, Marianas Islands, and the Estate of Antonio Ingay Bayona, deceased, et al., Defendant.

AMENDED DECLARATION OF TAKING

Whereas, there was filed in this cause a Declaration of Taking dated 11 April 1949; and

Whereas, it has been determined that a revised

description of the lands and a revised map thereof should be filed in this proceeding; and

Whereas, the estimated just compensation heretofore deposited has been redetermined and the required allocations to each tract made,

Now, Therefore, I, Secretary of the Navy, do hereby amend the Declaration of Taking in the following particulars:

1. By striking therefrom the first six lines of paragraph III, and substituting in lieu thereof the following:

That the land subject of this proceeding is situated in the Municipality of Barrigada, Island of Guam, Marianas Islands, delineated on a map entitled "Acquisition of Lands, Barrigada Village, Guam, M. I.", dated March 27, 1952, and is more particularly bounded and described as follows:

2. By striking therefrom the last five lines of paragraph III, and substituting in lieu thereof the following:

Less and Except all lands or interests therein owned by the United States of America or the Naval Government of Guam, containing after such exceptions, 368,561 square meters of land, more or less.

3. By striking all of paragraph V and substituting in lieu thereof the following:

A copy of the map entitled "Acquisition of Lands, Barrigada Village, Guam, M. I." dated March 27, 1952, showing the land taken, and delineating the several parcels is attached hereto as Exhibit "A" and made a part hereof.

4. By striking all of paragraph VI and substituting in lieu thereof the following:

The sum of reestimated just compensation for said lands, with all buildings and improvements thereon, and all appurtenances thereto, for the estate above set forth, as determined by me, is Six Thousand Eight Hundred and Seventy-One (\$6,871.00) Dollars, which said sum is deposited in the registry of the court for the use and benefit of the persons entitled thereto and more particularly allocated in Schedule "A" attached hereto and made a part hereof.

I am of the opinion that the ultimate award for the taking of these lands will be within the limits prescribed by the Congress.

In Witness Whereof, the petitioner, by and through the Secretary of the Navy has caused this Amended Declaration of Taking to be signed in the City of Washington, District of Columbia, this 1st day of May 1952.

/s/ DAN A. KIMBALL,
Secretary of the Navy.

Schedule "A"

The persons having title to or other interests in the lands described in the Declaration of Taking, delineated on Exhibit "A", and more particularly identified below, and the amounts estimated to be just compensation for each respective parcel, are as follows:

Parcel: 1A and 1B—Owner: Juana Pangelinan

Martinez, C.I. 87, 1/10th interest; Joaquin Pangelinan Martinez, C.I. 90, 1/10th interest; Juan Pangelinan Martinez, C.I. 88, 1/10th interest; Manuel Pangelinan Martinez, C.I. 9891, 1/10th interest; Jesus Pangelinan Martinez, C.I. 15295, 1/10th interest; Francisco Pangelinan Martinez, C.I. 19440, 1/10th interest; Rosa Pangelinan Martinez, also known as Rosa Martinez Flores, C.I. 13427, 1/10th interest; H. O. Vicente Pangelinan Martinez, deceased, represented by Concepcion Cruz Martinez, Administratrix, 1/10th interest; Rita Pangelinan Martinez (also known as Rita Martinez Unpingco) C.I. 9343, 1/10th interest; Maria Pangelinan Martinez (also known as Maria Martinez Flores), C.I. 9078, 1/10th interest. Area (sq. m.): 13,901. Deposit: \$245.00.

Description: Parts of Lot No. 1073, Municipality of Barrigada, sometime designated unofficially as Lots 1073-2 and 1073-3.

Parcel: 2—Owner: Manuel Cruz Blas, C.I. 4934. Area (sq. m.): 40,104. Deposit: \$600.00.

Description: Part of Lot No. 1074, Municipality of Barrigada, sometime designated unofficially as Lot 1074-3.

Parcel: 3—Owner: H. O. Benigno Cruz Mendiola, deceased, represented by Jose Franquez Mendiola, Adm. Area (sq. m.): 14,771. Deposit: \$390.00.

Description: Part of Lot No. 1070, Municipality of Barrigada, sometime designated unofficially as Lot 1070-2.

Parcel: 4—Owner: Jose Martinez Torres, de-

ceased, 5 May, 1950; now H. O. Jose Martinez Torres, deceased, represented by Felix Calvo Torres, Adm. Area (sq. m.): 72,126. Deposit: \$1195.00.

Description: Part of Lot No. 1069, Municipality of Barrigada, sometime designated unofficially as Lot 1069-3.

Parcel: 5—Owner: H.O. Francisco Santos Camacho, deceased, represented by Rosa Sablan Camacho, Administratrix. Area (sq. m.): 3,455. Deposit: \$95.00.

Description: Part of Lot No. 1068, Municipality of Barrigada, sometime designated unofficially as Lot 1068-2.

Parcel: 6—Owner: Ignacio Cruz Muna (also known as Ignacio Muna Cruz). Area (sq. m.): 15,629. Deposit: \$395.00.

Description: Part of Lot No. 1023, Municipality of Barrigada, sometime designated unofficially as Lot 1023-2.

Parcel: 7—Owner: Juan Cruz Aguon, C.I. 2804. Area (sq. m.): 6,190. Deposit: \$125.00.

Description: Part of Lot No. 1021, Municipality of Barrigada, sometime designated unofficially as Lot 1021-2.

Parcel: 8—Owner: Juan Cruz Aguon, C.I. 2804. Area (sq. m.): 10,726. Deposit: \$210.00.

Description: Part of Lot No. 1085, Municipality of Barrigada, sometime designated unofficially as Lot 1085-2.

Parcel: 9—Owner: Encarnacion Peraira Cruz, C.I. 4932, $\frac{1}{2}$ interest; Carlos Peraira Cruz, C.I.

8595, $\frac{1}{8}$ interest; Regina Peraira Cruz, C.I. 12013, $\frac{1}{8}$ interest; Candelaria Peraira Cruz, C.I. 14072, $\frac{1}{8}$ interest; Alejandro Peraira Cruz, C.I. 16117, $\frac{1}{8}$ interest; represented by Regina Peraira Cruz, Attorney in Fact. Area (sq. m.): 3,927. Deposit: \$105.00.

Description: Part of Lot No. 1084, Municipality of Barrigada, sometime designated unofficially as Lot 1084-2.

Parcel: 10—Guiseppe D'Angelo, C.I. 7667. Area (sq. m.): 12,281. Deposit: \$220.00.

Description: Part of Lot No. 1080, Municipality of Barrigada, sometime designated unofficially as Lot 1080-2.

Parcel: 11—Owner: H. O. Juan Leon Guerrero Concepcion (also known as Juan Concepcion Leon Guerrero), deceased, represented by Ignacio Sablan Leon Guerrero, Adm. Area (sq. m.): 17,377. Deposit: \$315.00.

Description: All of Lot 1079, Municipality of Barrigada.

Parcel: 12—Owner: Antonio Respicio Perez, C.I. 3114. Area (sq. m.): 636. Deposit: \$50.00.

Description: All of Lot No. 1021-A, Municipality of Barrigada.

Parcel: 13—Owner: Antonio Respicio Perez, C.I. 3114. Area (sq. m.): 19,275. Deposit: \$380.00.

Description: All of Lot No. 1022, Municipality of Barrigada.

Parcel: 14—Owner: H. O. Fabian Gomez Idor, deceased, represented by Jose R. Fejerang, Adm. Area (sq. m.): 9,860. Deposit: \$150.00.

Description: All of Lot No. 1078, Municipality of Barrigada.

Parcel: 15—Owner: H.O. Jose Martinez Torres, deceased, represented by Felix Calvo Torres, Adm. Area (sq. m.): 16,480. Deposit: \$360.00.

Description: All of Lot No. 1075, Municipality of Barrigada.

Parcel: 16—Owner: H. O. Antonio Ingay Bayona (also known as Antonio Ballona Ingay) deceased, represented by Juan Iglesias Bayona, Adm. Area (sq. m.): 47,540.62 Deposit: \$820.00.

Description: Part of Lot No. 1077, Municipality of Barrigada, sometime designated unofficially as Lot 1077-2.

Parcel: 17—Owner: H. O. Ramon Cruz Salas, deceased, represented by Antonio Leon Guerrero Salas, Adm. Area (sq. m.): 14,199.88. Deposit: \$385.00.

Description: Part of Lot No. 1081, Municipality of Barrigada, sometime designated unofficially as Lot 1081-2.

Parcel: 18—Owner: Julian Lujan Flores. Area (sq. m.): 594.46. Deposit: \$25.00.

Description: Part of Lot No. 1082, Municipality of Barrigada, sometime designated unofficially as Lot 1082-2.

Parcel: 19—Owner: Jose Torres Crisostomo. Area (sq. m.): 6,394.14. Deposit: \$110.00.

Description: Part of Lot No. 2365, Municipality of Barrigada, sometime designated unofficially as Lot 2365-2.

Parcel: 20:—Owner: Guiseppe D'Angelo, C.I. 7667. Area (sq. m.): 31,481.50. Deposit: \$630.00.

Description: Part of Lot No. 2264, Municipality of Barrigada, sometime designated unofficially as Lot 2264-2.

Parcel: 21—Owner: Guiseppe D'Angelo, C.I. 7667. Area (sq. m.): 961. Deposit: \$50.00.

Description: All of Lot No. 1076, Municipality of Barrigada.

Parcel: 22—Owner: Juana Pangelinan Martinez, C.I. 87, 1/10th interest; Juan Pangelinan Martinez, C.I. 88, 1/10th interest; Joaquin Pangelinan Martinez, C.I. 90, 1/10th interest; H. O. Vicente Pangelinan Martinez, deceased, represented by Concepcion Pangelinan Martinez, Admx. 1/10th interest; Manuel Pangelinan Martinez, C.I. 9891, 1/10th interest; Jesus Pangelinan Martinez, C.I. 15295, 1/10th interest; Francisco Pangelinan Martinez, C.I. 19440, 1/10th interest; Rita Pangelinan Martinez (also known as Rita Martinez Unpingco) C.I. 9343, 1/10th interest; Maria Pangelinan Martinez (also known as Maria Martinez Flores), C.I. 9078, 1/10th interest; Rosa Pangelinan Martinez (also known as Rosa Martinez Flores) C.I. 13427, 1/10th interest. Area (sq. m.): 259. Deposit: \$15.00.

Description: Part of Lot No. 2263, Municipality of Barrigada, sometime designated unofficially as Lot 2263-2.

Any and all other right, title and interest: \$1.00.

[Endorsed]: Filed September 15, 1952.

[Title of District Court and Cause.]

SECOND AMENDMENT TO COMPLAINT

The second amendment to the complaint for condemnation of the United States of America, represented herein by James G. Mackey, United States Attorney and Hollis Atkinson, Special Attorney, Department of Justice, alleges:

That an amended declaration of taking and a judgment on amended declaration of taking have heretofore been filed herein, and this second amendment to the complaint is filed to amend the description and designation of the lands and to revise the listing of ostensible owners to conform with that set forth in said amended declaration of taking and judgment on amended declaration of taking, as follows:

1. By striking the first six lines of Paragraph III of the complaint and substituting in lieu thereof the following:

That the land subject of this proceeding is situated in the Municipality of Barrigada, Island of Guam, Marianas Islands, delineated on a map entitled "Acquisition of Lands, Barrigada Village, Guam, M.I.", dated March 27, 1952, and is more particularly bounded and described as follows:

2. By striking the last five lines of Paragraph III and substituting in lieu thereof the following:

Less and Except all lands or interests therein

owned by the United States of America or the Naval Government of Guam, containing after such exceptions, 368,561 square meters of land, more or less.

3. By striking all of Paragraph IV and substituting in lieu thereof the following:

A copy of the map entitled "Acquisition of Lands, Barrigada Village, Guam, M.I.", dated March 27, 1952, showing the land taken, and delineating the several parcels is attached to the amended declaration of taking filed herein as Exhibit "A".

4. By striking all of Paragraph V and substituting in lieu thereof the following:

That Plaintiff is informed and therefore alleges that the above described land includes the whole of Lots designated 1021-2, 1021-A, 1022, 1023-2, 1068-2, 1069-3, 1070-2, 1073-2 and 1073-3, 1074-3, 1075, 1076, 1077-2, 1078, 1079, 1080-2, 1081-2, 1082-2, 1084-2, 1085-2, 2263-2, 2264-2, 2365-2 as delineated on a map entitled "Acquisition of Lands, Barrigada Village, Guam, M.I.", dated March 27, 1952 attached to the amended declaration of taking filed herein as Exhibit "A".

5. By striking all of Paragraph VII of the complaint and substituting in lieu thereof the following:

The persons having or claiming an interest in the property whose names are now known are:

Parcel: 1A and 1B. Lot: 1073-2 and 1073-3. Ostensible Owners: Juana Pangelinan Martinez, Juan Pangelinan Martinez, Joaquin Pangelinan Martinez, Heirs of Vicente Pangelinan Martinez, Deceased, Concepcion Cruz Martinez, Administratrix, Manuel Pangelinan Martinez, Jesus Pangelinan Martinez, Francisco Pangelinan Martinez, Joaquin Pangelinan Martinez, Attorney in Fact, Rita Martinez Unpingco, Maria Martinez Flores, Rosa Pangelinan Martinez, now known as Rosa Martinez Flores.

Parcel: 2. Lot: 1074-3. Ostensible Owners: Manuel C. Blas, William M. Byrne, lessee.

Parcel: 3. Lot: 1070-2. Ostensible Owners: Heirs of Benigno Cruz Mendiola, Deceased, Jose Franquez Mendiola, Administrator.

Parcel: 4. Lot: 1069. Ostensible Owners: Jose Martinez Torres, Deceased, Felix Calvo Torres, Administrator.

Parcel: 5. Lot 1068-2. Ostensible Owners: Heirs of Francisco Santos Camacho, Deceased, Rose Sablan Camacho, Administratrix, Rosa S. Camacho, Maria C. Arriola, Manuela S. Camacho, Ana S. Camacho, Gregorio S. Camacho, Jose C. Camacho, Rosario S. Camacho, Jesus C. Camacho. Unknown Heirs, Devisees and Creditors of Soledad C. Arriola, Deceased, Vicente F. Arriola, Administrator.

Parcel: 6. Lot: 1023-2. Ostensible Owners: Ignacio Cruz Muna, aka Ignacio Muna Cruz.

Parcel: 7. Lot: 1021-2. Ostensible Owner: Juan Cruz Aguon.

Parcel: 8. Lot: 1085-2. Ostensible Owner: Juan Cruz Aguon.

Parcel: 9. Lot: 1084-2. Ostensible Owners: Encarnacion Peraira Cruz, Carlos Peraira Cruz, Regina Peraira Cruz, Candelaria Peraira Cruz. Alejandro Peraira Cruz, Represented by Regina Peraira Cruz, Attorney-in-Fact.

Parcel: 10. Lot: 1080-2. Ostensible Owner: Giuseppe D'Angelo.

Parcel: 11. Lot: 1079. Ostensible Owners: Heirs of Juan Leon Guerrero Concepcion, aka Juan Concepcion Leon Guerrero, Ingacio Sablan Leon Guerrero, Administrator.

Parcel: 12. Lot: 1021-A. Ostensible Owner: Antonio Respicio Perez.

Parcel: 13. Lot: 1022. Ostensible Owner: Antonio Respicio Perez.

Parcel: 14. Lot: 1078. Ostensible Owners: Heirs of Fabian Gomez Idor, Deceased, Jose R. Fejerang, Administrator.

Parcel: 15. Lot: 1075. Ostensible Owners: Estate of Jose Martinez Torres, Deceased, Felix Calvo Torres, Administrator.

Parcel: 16. Lot: 1077-2. Ostensible Owners: Heirs of Antonio Ingay Bayona, Deceased, aka Antonio Ballona Ingay, Juan Iglesias Bayona, Administrator.

Parcel: 17. Lot: 1081-2. Ostensible Owners: Heirs of Ramon Cruz Salas, Deceased, Antonio Leon Guerrero Salas, Administrator.

Parcel: 18. Lot: 1082-2. Ostensible Owner: Julian Lujan Flores.

Parcel: 19. Lot: 2365-2. Ostensible Owner: Jose Torres Crisostomo.

Parcel: 20. Lot: 2264-2. Ostensible Owner: Giuseppe D'Angelo.

Parcel: 21. Lot: 1076. Ostensible Owner: Giuseppe D'Angelo.

Parcel: 22. Lot: 2263-2. Ostensible Owners: Juana Pangelinan Martinez, Juan Pangelinan Martinez, Joaquin Pangelinan Martinez, Heirs of Vicente Pangelinan Martinez, Deceased, Concepcion Cruz Martinez, Administratrix, Manuel Pangelinan Martinez, Jesus Pangelinan Martinez, Francisco Pangelinan Martinez, Joaquin Pangelinan Martinez, Attorney in Fact, Rita Martinez Unpingco, Maria Martinez Flores, Rosa Pangelinan Martinez, now known as Rosa Martinez Flores.

Wherefore Plaintiff prays judgment that the property be condemned and that just compensation for the taking be ascertained and awarded, and for such other relief as may be lawful and proper.

UNITED STATES OF AMERICA,

/s/ By JAMES G. MACKEY,
United States Attorney,

/s/ HOLLIS ATKINSON,
Special Attorney,
Department of Justice.

[Endorsed]: Filed September 15, 1952.

In The District Court of Guam
Territory of Guam

Civil No. 6-49

UNITED STATES OF AMERICA,

Plaintiff,

vs.

380,438 square meters of land, more or less, situate
in the Municipality of Barrigada, Island of
Guam, Marianas Islands and the Estate of An-
tonio Ingay Bayona, Deceased, et al.,

Defendants.

DEFICIENCY JUDGMENT

The above-entitled case coming on for trial before the court and jury on April 8, 1957, at 9:30 o'clock in the forenoon, pursuant to due notice given, the Plaintiff and the Defendants appearing by their respective attorneys, the said parties having presented their evidence, the Plaintiff at the close of all the evidence having moved for a directed verdict in accordance with the evidence adduced by Plaintiff; and the Court, after hearing and considering all of the evidence and after hearing upon said motion, having found that the defendants failed to adduce relevant and competent evidence sufficient to support a verdict and having sustained the said motion and directed entry of judgment in accordance therewith;

And it appearing that the sums set after the lot and tract numbers hereinafter listed have been de-

terminated to be the just compensation payable by the United States of America for the taking of title in fee simple absolute to the respective lots or parts thereof and tracts, to-wit:

Lot No. 1074, Barrigada, Tract No. 2	\$1220.00
Lot No. 1069, Barrigada, Tract No. 4	2860.00
Lot No. 1068, Barrigada, Tract No. 5	225.00
Lot No. 1075, Barrigada, Tract No. 15	565.00

all as described in the complaint and declaration of taking, and amendments thereto, filed herein, which sums shall cover all claims of any kind or character whatever for the taking of title in fee simple absolute to the said lands by the United States of America;

And it further appearing that the persons entitled to said awards are as hereinafter listed, to-wit:

To the award for Lot No. 1074, Barrigada, Tract No. 2: Manuel C. Blas.

To the award for Lot No. 1069, Barrigada, Tract No. 4: Felix Calvo Torres as Administrator of the Estate of Jose Martinez Torres, Deceased.

To the award for Lot No. 1068, Barrigada, Tract No. 5: Rosa Sablan Camacho as administratrix of the Estate of Francisco Santos Camacho, Deceased.

To the award for Lot No. 1075, Barrigada, Tract No. 15: Felix Calvo Torres as Administrator of the Estate of Jose Martinez Torres, Deceased.

And it further appearing that the sums of Six Hundred Dollars (\$600.00) for Lot No. 1074, Barrigada, Tract No. 2; One Thousand One Hundred

and Ninety-Five Dollars (\$1195.00) for Lot No. 1069, Barrigada, Tract No. 4; Ninety-Five Dollars (\$95.00) for Lot No. 1068, Barrigada, Tract No. 5; and Three Hundred and Sixty Dollars (\$360.00) for Lot No. 1075, Barrigada, Tract No. 15, for satisfaction of judgment herein, have heretofore been deposited by the United States of America in the registry of the court; and that pursuant to order of this court upon application of Defendant, the aforesaid sum of One Thousand One Hundred and Ninety-Five Dollars (\$1195.00) has heretofore been paid to and received by Defendant Felix Calvo Torres as Administrator of the Estate of Jose Martinez Torres, Deceased.

Now Therefore It Is Ordered, Adjudged, and Decreed that judgment be entered against the United States of America as follows:

For the sum of One Thousand Two Hundred and Twenty Dollars (\$1220.00), with interest on the sum of Six Hundred and Twenty Dollars (\$620.00) at the rate of six per cent per annum from April 11, 1949, until paid, which is hereby awarded to Manuel C. Blas.

For the sum of One Thousand Six Hundred and Sixty-Five Dollars (\$1665.00) with interest at the rate of six per cent per annum from April 11, 1949, until paid, which is hereby awarded to Felix Calvo Torres as Administrator of the Estate of Jose Martinez Torres, Deceased.

For the sum of Two Hundred and Twenty-Five Dollars (\$225.00), with interest on the sum of One Hundred and Thirty Dollars (\$130.00), at the

rate of six per cent per annum from April 11, 1949, until paid, which is hereby awarded to Rosa Sablan Camacho as Administratrix of the Estate of Francisco Santos Camacho, Deceased.

For the sum of Five Hundred and Sixty-Five Dollars (\$565.00), with interest on the sum of Two Hundred and Five Dollars (\$205.00), at the rate of six per cent per annum from April 11, 1949, which is hereby awarded to Felix Calvo Torres, as Administrator of the Estate of Jose Martinez Torres, Deceased.

It Is Further Ordered that the Clerk of the District Court of Guam shall pay to the said Defendants the sums now on deposit in the Registry of this Court for their respective tracts and lots by checks drawn on the said funds countersigned by the Judge of this Court, upon taking proper receipts therefor, and the said Clerk shall likewise pay to the said Defendants the balances of the sums hereinabove adjudged and awarded to them respectively as soon as possible after receipt of the same from the United States of America, and when all of the said sums have been so paid the Clerk shall note upon the docket that this judgment has been paid in full.

Dated this 12th day of April, 1957.

/s/ PAUL D. SHRIVER,

Judge of the District Court of Guam

[Endorsed]: Filed April 12, 1957.

[Title of District Court and Cause.]

MOTION TO SET ASIDE ORDER AND
JUDGMENT AND FOR NEW TRIAL

To: The Judge, District Court of Guam:

Come Now, Defendants, and most respectfully move this court to set aside the order and judgment herein and to grant a new trial of the above-entitled cause for the following reasons, to-wit:

1. That the court erred in not submitting the case to the jury, there being substantial and relevant facts presented for the jury to decide;

2. That the court erred in considering merely the sales of agricultural lands to support the order and judgment, the lots in question being admitted by the parties to be residential and commercial lots;

3. That the court erred in not evaluating the testimony of the expert witnesses presented by the defendants and the testimonies of the other defendants' witnesses concerning the values of lands which are close to the lots in question;

4. That the order and judgment are against the weight of or contrary to the evidence;

5. That the amount awarded in the judgment is not the fair value or just compensation of the lots in question on the date of vesting, that is, April 11, 1949;

6. That the credibility of the witnesses and the

weight of their testimonies are for the jury and not for the court to determine.

Wherefore, it is most respectfully prayed that this motion be granted.

Agana, Guam, Marianas Islands, 22 April, 1957.

REYES & LAMORENA,

/s/ By V. C. REYES,

Attorneys for Tracts 2, 4 & 15.

Notification

To: Olen W. Burnett, Assistant United States Attorney, Attorney for the Government, and Joaquin C. Arriola, Attorney at Law, Attorney for Tract 5:

Please take notice that on Friday, May 3, 1957, at 9:30 A.M. at the courtroom of the District Court of Guam, Guam Congress Building, City of Agana, Guam, or as soon thereafter as counsel can be heard, the undersigned will present and argue the foregoing motion.

Dated: 22nd April, 1957.

REYES & LAMORENA,

/s/ By V. C. REYES,

Attorneys for Tracts 2, 4 & 15.

[Endorsed]: Filed April 22, 1957.

[Title of District Court and Cause.]

MINUTE ORDER

May 3, 1957

Government appears by Olen W. Burnett, Assistant United States Attorney.

Reyes and Lamorena appear in interest of Tracts 2, 4 and 15. J. C. Arriola appears in interest of Tract 5.

Having heard the arguments of the attorneys for the respective parties, Ordered that Motion to Set Aside Order and Judgment and for New Trial be and hereby is denied.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Manuel C. Blas, owner of Tract 2, Part of Lot 1074, and the Estate of Jose Martinez Torres, owner of Tract 4, Part of Lot 1089 and Tract 15, Part of Lot 1075, two of the defendant-owners of the lands above-named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the order of the District Court of Guam granting the Motion for Directed Verdict promulgated in open court on April 8, 1957, the Judgment entered on April 12, 1957, and the Order promulgated in open court on May 3, 1957, denying the Motion for New Trial.

Agana, Territory of Guam, 26th June, 1957.

REYES & LAMORENA,
/s/ By ALBERTO T. LAMORENA,
Attorneys for Appellants Manuel C. Blas and the
Estate of Jose Martinez Torres, Deceased.

[Endorsed]: Filed June 26, 1957.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE OF
TRANSMITTAL

I, Roland A. Gillette, Clerk of the District Court of Guam, in and for the Territory of Guam, M.I., do hereby certify that the following documents, to-wit:

1. Declaration of Taking, filed April 11, 1949,
2. Complaint in Condemnation, filed April 11, 1949,
3. Amended Complaint, filed May 13, 1949,
4. Order of Court, entered and filed May 13, 1949,
5. Motion for Judgment on Declaration of Taking, filed August 18, 1949,
6. Judgment on Declaration of Taking, entered and filed August 18, 1949,
7. Order transferring action to District Court of Guam, entered and filed December 22, 1950,
8. Petition for Order and Order extending Order of Removal, filed and entered June 22, 1951,
9. Amended Declaration of Taking, filed September 15, 1952,

10. Judgment on Amended Declaration of Taking, entered and filed September 15, 1952,

11. Second Amendment to Complaint, filed September 15, 1952,

12. Notice, filed September 15, 1952,

13. Disclaimer Lot 1074-3 Barrigada, filed September 17, 1952,

14. Answer Lots 1069-3 & 1075 Barrigada, filed October 7, 1952,

15. Answer Lot 1074-3 Barrigada, filed October 7, 1952,

16. Petition for Advance Withdrawal Lot 1069-3, Tract 4, Barrigada & Order of court entered and filed February 5, 1953,

17. Notice of Motion for Pre-Trial Conference and Trial Tracts 4, 15 & 2, filed December 20, 1956.

18. Pre-Trial Order, entered February 4, 1957,

19. Deficiency Judgment, entered and filed April 12, 1957,

20. Motion to set aside Order and Judgment and for New Trial, filed April 22, 1957,

21. Receipt for \$3,903.43, filed June 11, 1957,

22. Notice of Appeal, filed June 26, 1957,

23. Appeal Bond, filed June 26, 1957,

24. Defendants' Designation of Record on Appeal, filed July 17, 1957,

25. Government's Designation of Record of Appeal, filed July 25, 1957,

26. Ex Parte Motion for Extension to and including September 17, 1957, filed August 2, 1957,

27. Order extending time, entered and filed August 2, 1957,

28. Stipulation for Omission of papers from record on Appeal, filed August 22, 1957,

29. Clerk's Minutes,
are the original documents or true copies thereof filed with the clerk of the Court in the above entitled cause.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of the aforesaid court at Agana, Guam, M.I., this 18th day of November, A.D., 1957.

[Seal] /s/ ROLAND A. GILLETTE,
Clerk of the Court.

[Title of District Court and Cause.]

TRANSCRIPT OF PROCEEDINGS

Agana, Guam—April 8, 1957

Appearances: For the Plaintiff Olen W. Burnett, Assistant United States Attorney, Attorney for the Plaintiff. For the Defendants: V. C. Reyes, Attorney-at-Law and Alberto Lamorena, Attorney-at-Law, Attorneys for the Defendants Blas and Torres.

Trial by Jury

The Court: This is a civil case of the United States of America vs. 380,438 square meters of land, Civil Case No. 6-49. Are you ready in this case?

Mr. Lamorena: Yes, your Honor.

The Court: Are you representing all of the defendants?

Mr. Lamorena: Yes, sir.

The Court: Is the Government ready?

Mr. Burnett: Yes, sir.

The Court: Will counsel sign the pretrial order?

(Both counsel signed the pretrial order).

The Court: Good morning ladies and gentlemen, I want to explain to you that the action before you this morning is a condemnation case. As you know, the United States of America or the Government of Guam have the right to take private property for public purposes. When the government takes private property for public purposes or condemns it, the government is obligated to pay the property owners just compensation for that property at the time it is taken. Now the procedure is this: If the government requires private property, in this case land in the municipality of Barrigada was taken, the government causes an appraisal to be made of the value of that land at the time it is taken as in this case in 1949. Based upon that appraisal, the government then pays into court the amount of money represented by the appraisal. The individual land owner then has one of the three alternatives assuming that no question is presented as to the right of the taking as there is no question in this case. The former land owners did not question the authority of the government to take the land. The land owner then may agree with [1]* the government as to the value of the land and later enter into a stipulation. When that is done,

* Page numbers appearing at top of page of Reporter's Transcript of Record.

the land owner is paid and that disposes of that particular land. The land owner may withdraw the amount of money which the government has paid in, assuming that the title is clear, and reserve his right to have the question of just compensation determined by the jury. When that is done, the jury then determines what amount of just compensation should be paid to the land owner. If the jury finds that that amount is greater than the government has paid in, the land owner is then entitled to the difference between what was paid in and what the jury finds to be the value and obtains interest on that sum from the date of the taking in 1949. If the jury finds that the government has paid in more than the land is worth and the land owner has withdrawn the amount, then the land owner must pay back into the fund the overage. Of course, the third situation is that in which the land owner does not care to withdraw the money but leaves it in the possession of the court until the court or jury has determined just compensation. Therefore, this morning, your responsibility or the responsibility of the jury finally selected in this case will be to determine the just compensation which should be paid for the taking of four parcels of land in the municipality of Barrigada. In cases of this kind, the burden is upon the defendants, the former land owners, to show the amount of damage in terms of just compensation. While the United States Government is the plaintiff in the sense that it brought the condemnation action and ordinarily the plaintiff must carry

the burden of proof. In condemnation, the converse is true and the defendants must show by a preponderance of the evidence, as the court will define such terms to you subsequently, that the amount paid in by the government does not represent just compensation. [2] Obviously in getting jurors, twelve jurors to pass upon the question of just compensation, jurors should be unprejudiced as between the land owners and the government and should not have any pending claims of their own which would prejudice them against the government. Call the jury.

Mr. Reyes: We represent, your Honor, tracts No. 2 and 5 but Mr. Arriola is supposed to represent tract No. 5.

The Court: What about tract No. 5, is it in the same general location?

Mr. Reyes: Yes, sir, it is in the immediate vicinity.

The Court: Now, we have two alternatives, one of them is to eliminate tract No. 5 this morning and handle that in connection with some other action or, of course, since there was no motion, your evidence this morning will govern. Call the jury.

The Clerk: Number 44, Marcial S. Sablan; Number 32, Joseph Drennan Manibusan; Number 19, Dorothea Garrido Sgambelluri; Number 14, Rosa Teresita Salas; Number 20, Tomasa Pereira Leon Guerrero; Number 15, Francisco G. Gumatatiao; Number 2, Joaquina Munoz Santos; Number 33, James Philip Lomax; Number 21, Alfred Santos Rios; Number 24, Ignacio Perez Quitugua;

Number 12, Juan Cruz San Agustin; Number 23, Luis Torres Martinez.

(Jurors sworn.)

The Court: Mr. Sablan, as I pointed out to you, this is an action in which the government has condemned land in the municipality of Barrigada. The former property owners are represented by Judge Reyes and Mr. Lamorena. The government is represented by the Assistant United States Attorney, Mr. Burnett. Now, do you know Judge Reyes or Mr. Lamorena?

Mr. Sablan: I know Mr. Reyes and Mr. Lamorena. I have seen him a couple of times but I have never met him. [3]

The Court: Do you know Mr. Lamorena?

Mr. Sablan: I have seen him.

The Court: You have no prejudice by virtue of your acquaintance with Judge Reyes?

Mr. Sablan: No.

The Court: Does your immediate family have any claims against the United States?

Mr. Sablan: Not at all.

The Court: Do you know of any reason, Mr. Sablan, why you could not sit as a fair and impartial juror and determine the value of this land according to the evidence presented to you?

Mr. Sablan: No, sir.

The Court: Thank you.

The Court: Mr. Manibusan, do you know Judge Reyes and Mr. Lamorena?

Mr. Manibusan: Yes, sir.

The Court: Judge Reyes related to you in any way?

Mr. Manibusan: No, sir.

The Court: Does he handle any legal work for you?

Mr. Manibusan: No, sir.

The Court: You would have no prejudice toward the government by virtue of the fact that you know Judge Reyes?

Mr. Manibusan: No.

The Court: Do you know the Assistant United States Attorney, Mr. Burnett?

Mr. Manibusan: No, sir.

The Court: Do you or your immediate family, Mr. Manibusan, have any claims against the United States resulting from land takings?

Mr. Manibusan: Yes. [4]

The Court: Have they been settled?

Mr. Manibusan: No, sir.

The Court: You have some claims open?

Mr. Manibusan: I have about six hectares of land that is still condemned.

The Court: Six hectares that are still subject to settlement as to the amount?

Mr. Manibusan: Yes, sir.

The Court: I think we will excuse you, sir. Call another juror.

The Clerk: Number 25, Helen Mae Morgan.

(Mrs. Morgan sworn.)

The Court: Mrs. Morgan, you probably know Judge Reyes?

Mrs. Morgan: I am acquainted with him.

The Court: Has he or Mr. Lamorena ever represented you in any legal matters?

Mrs. Morgan: No, your Honor.

The Court: Do you know the Assistant United States Attorney, Mr. Burnett?

Mrs. Morgan: I have met him.

The Court: Do you or your immediate family have any claims pending against the United States?

Mrs. Morgan: No, your Honor.

The Court: Do you know of any reason, Mrs. Morgan, why you could not sit as a fair and impartial juror and do justice between the government and the former land owners?

Mrs. Morgan: I do not.

The Court: Thank you very much.

The Court: Mrs. Sgambelluri, do you know Mr. Lamorena or Judge Reyes? [5]

Mrs. Sgambelluri: Your Honor, there is some relation between myself and Mr. Reyes.

The Court: Do you know the Assistant United States Attorney?

Mrs. Sgambelluri: No, your Honor.

The Court: Do you or any member of your immediate family have any claims against the United States?

Mrs. Sgambelluri: No, sir.

The Court: You know of any reason, Mrs. Sgambelluri, why you could not sit as a fair and impartial juror and determine the value of this land according to the evidence that is presented to you?

Mrs. Sgambelluri: No.

The Court: Thank you very much.

The Court: Mrs. Salas, you do know Judge Reyes?

Mrs. Salas: Yes, your Honor.

The Court: Is that merely an acquaintanceship?

Mrs. Salas: Friend of the family.

The Court: Is there any relationship with Judge Reyes?

Mrs. Salas: Yes.

The Court: How close is that relationship?

Mrs. Salas: He is my brother's godfather.

The Court: Do you feel that that would prejudice you in any way in passing upon this case, after all, this case is simply a question of doing justice between the government and the land owners based upon the evidence?

Mrs. Salas: No.

The Court: Do you know the Asistant United States Attorney?

Mrs. Salas: No, your Honor.

The Court: You know of any reason why you could not sit as a fair and impartial juror in this case? [6]

Mrs. Salas: No.

The Court: Do you or any of your immediate family have any claims pending with the United States Government?

Mrs. Salas: My father has.

The Court: He has some unsettled claims against the government?

Mrs. Salas: Yes.

The Court: I think we will excuse you. Call another juror.

The Clerk: Number 27, Jesus B. Leon Guerrero.

(Mr. Guerrero sworn.)

The Court: Mr. Guerrero, do you know Judge Reyes and Mr. Lamorena?

Mr. Guerrero: Yes, your Honor.

The Court: Is that an acquaintanceship only?

Mr. Guerrero: I believe he is a relative of mine.

The Court: Is that a fairly close relationship?

Mr. Guerrero: Not too far, not too close.

The Court: Has Judge Reyes ever represented you in any legal matters?

Mr. Guerrero: None.

The Court: Do you know the Assistant United States Attorney, Mr. Burnett?

Mr. Guerrero: Never met him.

The Court: Do you or does any member of your family have any claims against the United States still unsettled as a result of land takings?

Mr. Guerrero: My father had but it is closed.

The Court: Are those claims open?

Mr. Guerrero: No, he accepted it; he didn't make contest.

The Court: But he settle with the government?

Mr. Guerrero: He did.

The Court: Do you feel that he settled for less than the land was worth or something like that?

Mr. Guerrero: I am not sure.

The Court: Do you feel that you would be in any way prejudiced?

Mr. Guerrero: I regret to say, yes.

The Court: We will excuse you. Call another juror.

The Clerk: Number 43, Antonio Manibusan Palomo.

(Mr. Palomo sworn.)

The Court: Mr. Palomo, you know Judge Reyes and Mr. Lamorena and you know Mr. Burnett?

Mr. Palomo: Yes, sir.

The Court: Do you or any member of your family have any unsettled claims against the United States?

Mr. Palomo: My mother and my uncle. There has been a judgment passed to accept it.

The Court: Do you remember whether they settled it?

Mr. Palomo: Actually it is not a matter of settlement. They didn't take the money and they didn't fight it.

The Court: Do you feel that there would be some questions as to the amount received as fair value of the property?

Mr. Palomo: According to some of them; according to others, it is a matter of——

The Court: You are familiar with this type of case. Do you feel that if you were selected as a juror that you would be able to do justice between the land owners and the government?

Mr. Palomo: Well, I don't, judge. I might be prejudiced.

The Court: Very well, you may step down. Call another juror. [8]

The Clerk: Number 36, Ruby Ines Hubbel.

(Mrs. Hubbel sworn.)

The Court: Mrs. Hubbel, do you know Judge Reyes?

Mrs. Hubbel: Yes, I do.

The Court: Has Judge Reyes ever handled legal matters for you?

Mrs. Hubbel: No, sir.

The Court: Mr. Lamorena has not handled any?

Mrs. Hubbel: No, sir.

The Court: You know the Assistant United States Attorney, Mr. Burnett?

Mrs. Hubbel: Yes, sir.

The Court: Do you or any member of your family have any claims against the United States resulting from land takings?

Mrs. Hubbel: No, sir.

The Court: Do you know of any reason why you could not sit as a fair and impartial juror in this case and do justice according to the law and the evidence?

Mrs. Hubbel: No, your Honor.

The Court: Thank you very much.

The Court: Miss Leon Guerrero, you know Judge Reyes and Mr. Lamorena?

Miss Leon Guerrero: I know Judge Reyes.

The Court: Is he related to you in any way?

Miss Leon Guerrero: No, sir.

The Court: Has he handled any legal work for you or your family?

Miss Leon Guerrero: No, sir.

The Court: Do you or any member of your im-

mediate family have any unsettled claims against the United States resulting [9] of land takings?

Miss Leon Guerrero: No, sir.

The Court: You know of any reason why you could not sit as a fair and impartial juror to determine the value of this land according to the law and evidence?

Miss Leon Guerrero: No, sir.

The Court: Thank you very much.

The Court: Mr. Gumataotao, you know Judge Reyes and Mr. Lamorena?

Mr. Gumataotao: Yes, your Honor.

The Court: You are not related to Judge Reyes?

Mr. Gumataotao: No, sir.

The Court: Do you know the Assistant United States Attorney, Mr. Burnett?

Mr. Gumataotao: Yes, your Honor.

The Court: Just from seeing him?

Mr. Gumataotao: Yes, your Honor.

The Court: Do you or any member of your immediate family have any unsettled claims against the United States resulting from the takings of land?

Mr. Gumataotao: Yes, your Honor.

The Court: You yourself or your family?

Mr. Gumataotao: Yes, sir.

The Court: You yourself have unsettled claims?

Mr. Gumataotao: My family.

The Court: Is that your father?

Mr. Gumataotao: My father and my mother.

The Court: They have claims that have not been settled?

Mr. Gumataotao: Yes, your Honor.

The Court: Very well, you may step down, Mr. Gumataotao. [10] Call another juror.

The Clerk: Number 34, Jesus Espinosa.

(Mr. Espinosa sworn.)

The Court: Mr. Espinosa, do you know Judge Reyes or Mr. Lamorena?

Mr. Espinosa: Yes, sir.

The Court: Do you know the Assistant United States Attorney?

Mr. Espinosa: I know him now.

The Court: Do you or your immediate family have any unsettled claims against the United States as a result of land takings?

Mr. Espinosa: No, sir, none.

The Court: You have none?

Mr. Espinosa: No, sir.

The Court: You know of any reason why you could not sit as a fair and impartial juror in this case?

Mr. Espinosa: No, sir.

The Court: You know of any reason why you could not do justice here?

Mr. Espinosa: No, sir.

The Court: Thank you very much.

The Court: Mrs. Santos, do you know any of the counsel here, Judge Reyes, Mr. Lamorena or the Assistant United States Attorney?

Mrs. Santos: I know Mr. Reyes. He used to be my school teacher.

The Court: You are not related to him?

Mrs. Santos: No, sir.

The Court: If in fact he was your school teacher, it would not prejudice you in determining the issues in this case?

Mrs. Santos: No, sir. [11]

The Court: Do you or any member of your immediate family have any unsettled claims against the United States from land takings?

Mrs. Santos: Yes, sir, my father has three.

The Court: He has three claims that have not been settled?

Mrs. Santos: No.

The Court: There are some still open?

Mrs. Santos: Yes.

The Court: You may step down. Call another juror.

The Clerk: Number 10, Leocadio Bautista.

(Mr. Bautista sworn.)

The Court: Mr. Bautista, do you know Judge Reyes or Mr. Lamorena?

Mr. Bautista: Yes, sir.

The Court: Is Judge Reyes related to you in any way?

Mr. Bautista: Friends.

The Court: Has he handled any legal work for you?

Mr. Bautista: No.

The Court: Do you know the Assistant United States Attorney, Mr. Burnett, the attorney for the government?

Mr. Bautista: No, sir.

The Court: Do you, Mr. Bautista, or any member of your immediate family have any claims

against the United States resulting from land takings?

Mr. Bautista: No.

The Court: Do you know of any reason why you could not sit as a fair and impartial juror and determine the issues according to the evidence?

Mr. Bautista: No, sir.

The Court: Thank you very much. [12]

The Court: Mr. Lomax, you probably know Judge Reyes and Mr. Lamorena?

Mr. Lomax: Yes, sir.

The Court: You also know the Assistant United States Attorney?

Mr. Lomax: Yes, sir.

The Court: You have no claims against the United States?

Mr. Lomax: No, sir.

The Court: Do you know of any reason why you could not be a fair and impartial juror in this case?

Mr. Lomax: No, sir.

The Court: Thank you very much.

The Court: Mr. Rios, do you know Judge Reyes or Mr. Lamorena?

Mr. Rios: Yes, I do.

The Court: Is he related to you in any way?

Mr. Rios: No, sir.

The Court: Is that merely an acquaintanceship?

Mr. Rios: Yes, sir.

The Court: He hasn't handled any legal work for you?

Mr. Rios: No, sir.

The Court: You know Mr. Lamorena?

Mr. Rios: Yes, sir.

The Court: Is that also an acquaintanceship?

Mr. Rios: Yes, sir.

The Court: Do you know the Assistant United States Attorney, Mr. Burnett?

Mr. Rios: No, sir.

The Court: Do you or any member of your immediate family have any unsettled claims against the United States?

Mr. Rios: Yes, sir. [13]

The Court: Who is that?

Mr. Rios: My father and mother.

The Court: Those cases have not been settled?

Mr. Rios: Yes, sir.

The Court: Very well, you may step down. Call another juror.

The Clerk: Number 29, Cynthia Ruth Olson.

(Mrs. Olson sworn.)

The Court: Mrs. Olson, do you know Judge Reyes or Mr. Lamorena?

Mrs. Olson: I know Judge Reyes.

The Court: That is merely an acquaintanceship?

Mrs. Olson: Yes, sir.

The Court: He hasn't handled any legal work for you?

Mrs. Olson: No, sir.

The Court: You know Mr. Burnett, the Assistant United States Attorney?

Mrs. Olson: Yes, sir.

The Court: That is also an acquaintanceship?

Mrs. Olson: Yes, sir.

The Court: You have no claims against the United States?

Mrs. Olson: No.

The Court: You know of any reason why you could not sit as a fair and impartial juror in this case?

Mrs. Olson: No, I don't.

The Court: Thank you very much.

The Court: Mr. Quitugua, do you know Judge Reyes and Mr. Lamorena?

Mr. Quitugua: I do.

The Court: Is Judge Reyes related to you in any way? [14]

Mr. Quitugua: He married my distant auntie.

The Court: You do not feel that that would prejudice you in this case?

Mr. Quitugua: No.

The Court: Do you or any member of your immediate family have any unsettled claims against the United States?

Mr. Quitugua: There is a piece of a lot here in Agana, passed Route 4, which is still in question.

The Court: It still hasn't been closed?

Mr. Quitugua: The government is paying rent for it.

The Court: This is just a leasehold taking?

Mr. Quitugua: Yes.

The Court: Not a fee simple taking?

Mr. Quitugua: No.

The Court: Do you feel that you would in any way be prejudiced in this case in passing upon the question of just compensation?

Mr. Quitugua: No.

The Court: You would be governed entirely by the law and the evidence?

Mr. Quitugua: Yes, sir.

The Court: Thank you, sir.

The Court: Mr. San Agustin, do you know Judge Reyes or Mr. Lamorena?

Mr. San Agustin: I know Judge Reyes a little bit.

The Court: Either one of them handle any legal work for you?

Mr. San Agustin: Well, last week I handed a probate case to Mr. Lamorena which belongs to my father-in-law.

The Court: Did not involve you?

Mr. San Agustin: No. [15]

The Court: Do you or any member of your immediate family have any unsettled claims against the United States?

Mr. San Agustin: I don't know exactly, Judge.

The Court: Do you know of any reason, Mr. San Agustin, why you could not sit as a fair and impartial juror in this case?

Mr. San Agustin: I don't know.

The Court: Thank you very much.

The Court: Mr. Martinez, do you know Judge Reyes?

Mr. Martinez: Yes, your Honor.

The Court: Is he related to you in any way?

Mr. Martinez: No, your Honor.

The Court: Does he handle any of your legal work?

Mr. Martinez: No, your Honor.

The Court: You know Mr. Lamorena?

Mr. Martinez: Yes.

The Court: Same thing true of him?

Mr. Martinez: Yes, sir.

The Court: And you know the Assistant United States Attorney?

Mr. Martinez: No, sir.

The Court: Mr. Martinez, do you or any member of your immediate family have any unsettled land claims against the United States?

Mr. Martinez: I don't; my father has a piece of land down by the Piti Power Plant; how it stands, I don't know. I have no idea, sir.

The Court: You think, Mr. Martinez, you would be governed solely in this case by the law and evidence?

Mr. Martinez: Yes, sir.

The Court: Very well, the defense may examine the jury.

Mr. Lamorena: No examinations. [16]

The Court: Government may examine.

Mr. Burnett: No questions.

The Court: The twelve jurors now in the box are passed for cause by both sides?

Mr. Lamorena: Yes, your Honor.

Mr. Burnett: Yes, your Honor.

The Court: Defenses' first challenge?

Mr. Lamorena: Waive our first challenge.

The Court: Government?

Mr. Burnett: No challenge.

The Court: Both sides accept the jurors, twelve jurors, in the box?

Mr. Lamorena: Yes, sir.

Mr. Burnett: Yes, your Honor.

The Court: Swear the jury.

(Jury sworn by clerk.)

The Court: May I say to the remainder of the panel, you will be excused until next Monday morning at 9:30 a.m. You may remain, of course, if you wish, but you may leave. Defenses' opening statement. We will first take our ten-minute recess at the present time. The jurors will file out.

(Whereupon a ten-minute recess was taken by the court.)

10:35 a.m. Trial resumed.

The Court: The parties stipulated that the map marked Government's Exhibit 1 may be admitted in evidence as a correct drawing, drawn to scale, of the land areas involved in this particular case. Now, do you wish to make opening statements?

Mr. Reyes: Yes, your Honor. [17]

Opening Statements

Mr. Reyes: Ladies and gentlemen of the jury, this morning we are interested in the determination of the market value of three tracts of land in the Barrigada Village at the present time. These tracts of land are comprised of 1074, 1075 and 1069. Here is (pointing) Route No. 8 going to Barrigada and over here (pointing) is Route No. 10 going to BPM down to Yona. I am sure you have a clear view of

the place. Now the United States Government offered a price for the condemnation of these tracts of land. The offer was from——

Mr. Burnett: I object to going into such matters. Those are not relevant.

The Court: We can go into the question of offers. It is an offer made, an attempt to compromise.

Mr. Reyes: Your Honor, but I wanted to show how much the government offered to pay for this and why we are contesting it.

The Court: Offer to pay but you are talking of the government's original appraisal, is that correct?

Mr. Reyes: The government's appraisal was for a 1 6/10 to 2 9/10 per square meter of this property. We contend that this property cost considerably more and we will try to show it to you why this property cost more. For your examination and understanding this cardboard here represents one square meter of measure. In land this is one square meter. Thank you.

Mr. Burnett: Ladies and gentlemen, I have only a few words to say at this time. We are not concerned with what the government's appraisal originally was or anything other than the one in question of what is fair and just compensation for the United States to pay for the land. That is what we are concerned [18] with today. Mr. Reyes has pointed out to you already the lands involved on this map. Those lands were taken by the United States as part of the village of Barrigada. You may recall that during the war there was a great deal

of destruction, great deal of displacement of people, great deal of destruction of homes and after the war the United States set out to provide dwelling places, places for those left homeless to live in, and as part of that program, there was taken by the United States, land including that shown in red on the map, for the establishment of the village of Barrigada. That is the land we are concerned with now. You are not concerned with original appraisals or anything but a simple question of what is the just compensation the United States should pay for the taking of that land. All I am here to do is to present for your information and consideration the best evidence which we have been able to gather bearing upon the question, what was the fair market value of each of the tracts of land at the time it was taken and when that evidence has been received, all we ask for the government is that you consider the evidence and if you arrive at a verdict that you bring back fair and just verdicts determining what the fair market values of the land involved were. That is the only thing we are concerned with and that is all I can say to you.

Mr. Reyes: These tracts of land were taken by the government on April 11, 1949. [19]

JOSE C. MANIBUSAN

called as a witness hereby and on behalf of the defendants, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Reyes): Will you kindly state your name, your address and your occupation?

(Testimony of Jose C. Manibusan.)

A. Jose Camacho Manibusan, Leyang Barrigada, Chief Judge of the Island Court of Guam.

Q. Do you own any real properties in Guam?

A. Quite a few, yes, sir.

Q. Where are these properties located?

A. Sinajana, Barrigada, just those two.

Q. Barrigada comprises a lot of territory, will you be more specific as to the locations of your places in Barrigada, there are several places?

A. In Barrigada, it is 1100-1 in the BPM area, Lot No. 5372 in Sinajana, that will be Lots 135 and 152 that is in Chochogo and Mapas, Sinajana.

Q. Chochogo and Mapas?

A. That is right.

Q. Do you know the location, the general location of the tracts of land designated as Lots 1074, 1075 and 1069 in Barrigada village?

A. If you are referring to the property of J. M. Torres in Barrigada and Manuel C. Blas, I know the location because it is located by the road going from Agana to my property in Leyang.

Q. Lot 1074 is the property of Manuel C. Blas?

A. Yes.

Q. And 1075 and 1069 were properties owned by the late [20] J. M. Torres? A. Yes, sir.

Q. Your property in Sinajana or Chochogo, how is it related or how is it situated in relation to these tracts of land?

The Court: I don't understand what Judge Manibusan's land in Sinajana has to do with the land in Barrigada.

(Testimony of Jose C. Manibusan.)

Mr. Reyes: I am trying to find out the distance between his land in Barrigada and his land in Sinajana to the land now in question.

Mr. Burnett: It has nothing to do with the issue here.

The Court: What would be the relationship? What we are concerned with now is the land in Barrigada. There is quite a little distance between Barrigada and Sinajana.

Mr. Reyes: It is just an imaginary dividing land.

Q. (By Mr. Reyes): What is dividing your property between Sinajana or Chochogo to this area now known as Barrigada?

A. There are quite a few properties in between. If you refer to the district, Barrigada joins Sinajana and it is only divided by a roadway, we call it Canada Road.

Q. What is the distance between your Chochogo property and your Barrigada property that we are now talking about?

A. Going by automobile it would be about two and a half miles; by straight line, I would say about a mile or so.

Q. What is the distance between this Barrigada property and your Leyang property?

A. It is about a mile and a half by the road; a mile straight.

Q. Were these properties in Barrigada, Lots 1074, 1075 and 1069, adjoining any highway in 1949? [21]

(Testimony of Jose C. Manibusan.)

The Court: Now you continue to refer to lot numbers. The land in question, Judge Manibusan, is marked in red on the chart here.

A. From my own memory, I think there is a road, rather these (pointing) were roads.

The Court: Just refer to the chart as much as you want.

Mr. Burnett: We can save a little time. I will admit that Lot No. 1069 abuts Route 8 with a smaller area on Route 10. Lot No. 1074 abuts Route 8 and 1075 was an interior lot.

The Court: I think the question primarily is that Route 8 and 10 as now were in existence from 1949.

A. They were there.

Mr. Reyes: Is that stipulated?

Mr. Burnett: Yes.

Q. (By Mr. Reyes): Your property in Chochogo, Sinajana, Guam which is about two miles from these tracts was it in '49 or prior to '49 utilized in a similar situation as it is now?

Mr. Burnett: I will object to that. I don't see any relevancy in any way.

The Court: Yes, the question before Judge Manibusan is what were these lots used for at the time of taking in connection with 1949, not what the lots are used for now.

Mr. Reyes: I am trying to show the similarity of the two places with regards to location, situation and the residential advantages. I am not going into

(Testimony of Jose C. Manibusan.)

the market value of the place, just the comparison of the two.

Mr. Burnett: I don't think it is relevant.

The Court: I am afraid it is. Judge Reyes, Judge Manibusan testified about the three different properties. Of course, we [22] know that his own residence is not located on either one of these main highways, either Route 8 or 10. I don't see what you are getting at in terms of these particular properties. In other words the question is what is the value of these properties as of the time that they were taken, April 1949, not the value of his property because they may have a number of deficiencies.

Q. (By Mr. Reyes): In '49 or before '49, do you know what uses were made of the properties in question? A. The Torres and Blas?

Q. Yes.

A. I thought the village was there.

Q. The village was there? A. Yes.

Q. Was there a church or churches?

A. There was one church.

Q. Was there or were there stores or business establishments?

A. I wouldn't be sure about that.

Q. Was there a school or schools on the property?

A. I presume the Barrigada school was on the property and still is.

Q. Living in that area, do you know if there were any water facilities up there in 1949?

(Testimony of Jose C. Manibusan.)

A. I wouldn't say that. I wouldn't say whether there was any water then but if I remember correctly, these people were served with water from the wagon.

Q. Do you know how much the lands in Barrigada or that area were selling for in 1949?

A. I wouldn't be in a position to say that Mr. Reyes as I have never had any deal in that area but in my own place. So [23] my answer is I had no deal in any of the places or around that place.

Q. You mentioned that Barrigada, the Barrigada properties now under controversy or in controversy were used as a residential area in 1949. Was any of your property used for the like nature?

A. No, not in that area.

Q. Not in that area, but was your property utilized as such?

A. That would be in the BPM area but that is quite a distance away.

Q. How about your property in Chochogo?

A. That is a distance away, Mr. Reyes, about two miles away. If you want me to testify about that, I will, but it is quite a distance away, it is about one or two miles away.

Q. Will you kindly tell the court and the jury the general economic condition of the people of Guam in 1949?

A. What way, Mr. Reyes?

Q. Did they have money to buy properties or the like?

A. I think they had.

Q. And in cash?

A. Money, in cash.

(Testimony of Jose C. Manibusan.)

The Court: We should bring out whether this was agricultural land, or what.

Mr. Reyes: That is all.

Cross Examination

Q. (By Mr. Burnett): Judge Manibusan, I have only a very few questions. Now the Blas and the Torres properties which you referred to, is it [24] true that those were agricultural lands prior to the establishment of the village of Barrigada?

A. I think they were with the exception that in the Blas property, there was a house built on it.

Q. Well, I mean principal use of the property was for farming, it was not subdivided for residential?

A. No, it was for farming before the war.

Q. And up until the establishment of the village of Barrigada, is that correct? A. Yes, sir.

Q. That is all three of the lots concerned which we are speaking about? A. Yes, sir.

Q. It was the establishment of the village of Barrigada by the government rehabilitation program that changed this property to village or residential property, is that right? A. Yes, sir.

Redirect Examination

Q. (By Mr. Reyes): Do you know when the village of Barrigada was started?

Mr. Burnett: I object. It is entirely irrelevant.

The Court: Overrule the objection. Now, are you talking about when the village of Barrigada was originally established?

(Testimony of Jose C. Manibusan.)

Mr. Reyes: Yes.

Mr. Burnett: I would like to comment very briefly. Apparently counsel is trying to learn what was taken.

Mr. Reyes: What was taken in 1949? It was the village.

Mr. Burnett: These lands were all leasehold condemnations [25] from 1946 until fee was taken. The basis of evaluation is of farm land. Therefore, I object to the question, that is completely irrelevant.

The Court: I think the jury should be instructed as to the value of the property for its best possible use at the time of taking. The question is in 1949, in April, when you took the land, what was the development?

Mr. Burnett: Well——

The Court: It is your contention that if you lease the property for three years, that the value at the time you take it is the value at the time it was originally leased.

Mr. Burnett: The land is considered as if on the date of taking it was in the same condition as it was at the time of the lease.

Q. (By the Court): Before the war, was there a village of Barrigada?

A. It was further up.

Q. These lands that we are discussing were not included in the village? A. No.

Q. As result of the war and the resettlement of

(Testimony of Jose C. Manibusan.)

the people then the present village of Barrigada was established by the government?

A. Yes, sir.

Q. And these lands were taken as part of the lands——

A. That is right, sir.

Q. Prior to that time, sir, they were available for use for agricultural purposes and not residential?

A. I was trying to remember. There was a building there which used to house the police. I thought there was a little store. [26]

The Court: That is, of course, something that has to be developed, but not by Judge Manibusan's testimony, that it was at the time it was taken agricultural property before the war. I think you have everything from Judge Manibusan, whether it is material or not.

Mr. Reyes: Yes, sir.

Mr. Burnett: The development occurred during the period when the lands in question were under leasehold condemnation and after they were taken into possession by the United States, they were used for commercial and residential purposes when the fee was taken. I will agree to that.

The Court: Very well, are you through with Judge Manibusan?

Mr. Reyes: I have a few questions to ask him, please.

Q. (By Mr. Reyes): Judge Manibusan, prior to 1949, did you make any sales of real property?

A. Not prior to 1949 but during 1949.

(Testimony of Jose C. Manibusan.)

Q. What were your sales?

A. To tell you the truth there was quite a demand for land at the time and some of the people that were displaced, little further up around Fifth Field area, I let these people live there for some time in 1949 when the property was leased to me and offered to me to buy the place where the houses are on.

Q. How much?

Mr. Burnett: I will object.

The Court: Where is that place?

A. In Chochogo, one or two miles apart.

Mr. Reyes: Your Honor, the judge's land is around here (indicating on the map) somewhere.

Mr. Burnett: Are you asking him whether he sold land in Chochogo?

Mr. Reyes: Yes. [27]

Q. (By Mr. Reyes): What was the price of the land? A. From \$200 to \$500.

Q. How big?

A. I wouldn't say that because it is subdivided but it is enough for a house to stand on.

Q. In other words a house lot between \$200 to \$500?

A. I am not going to be definite because I allowed them to build in between houses.

Q. What was your price then, prices ranging from \$200 to \$500, is that right? A. Yes, sir.

Q. For a house lot?

A. Let me correct you. This is not my price;

(Testimony of Jose C. Manibusan.)

I never wanted to give them my price; this is their offers.

Mr. Burnett: I object. I want the answer stricken unless it is related to an area because the offer——

The Court: I don't think you are talking——

Mr. Reyes: But if evidence of offers were to be received, it would be necessary to know if the offer was made in good faith by a man of good judgment, acquainted with the value of the property and of ability to pay; whether the offer was for cash or for consideration in exchange and whether met with reference to the market value of the property.

The Court: You haven't laid the ground work. Judge Manibusan says he cannot because he was dealing on a highly personalized basis because of their need.

Mr. Reyes: It was not counted by any particular need; it was just a voluntary offer on the part of the tenants.

Mr. Burnett: Any offer is entirely hearsay. [28]

Mr. Lamorena: If your Honor, I believe it is not an offer. Those were paid to the judge. An offer is one which is not a consideration unless accepted.

The Court: That is my understanding, certain house lots, the areas of which he does not know because they were subject to subsequent subdivision, from \$200 to \$500.

Q. (By Mr. Reyes): Regarding the areas, Judge Manibusan, was it not agreed between you and these tenants that they would occupy only the

(Testimony of Jose C. Manibusan.)

yards or the yardage or the area occupied by the house?

A. In order to answer that, I may read the receipt. On 21st of February, 1949, the spouses Jose Camacho Manibusan, C. I. #253 and Maria Espinosa Manibusan, C. I. #254 receive the sum of Five Hundred Dollars (\$500) from the spouses Jose Manibusan Cruz, C. I. #3113 and Ana Cruz, C. I. #1552, for which we promise to sell a portion of Lot 152, Chochogo, Sinajana, Guam, where their house and that of their son Enrique Cruz Cruz stands, as indicated to them personally by the undersigned today. Regular request and deed of sale would be made upon subdivision of said lot, which will be at the expense of the Cruzes. This portion is the northeastern portion of said Lot 152, as far as about five (5) feet south of the present house of Enrique on the east and as far south as the lot line north of the Hannahs' house on the west, and the new road. It is bounded on the North by the property of Antonio L. G. Blas, on the East by the property of Jose F. Perez formerly a trail, on the South by remaining portion of Lot 152, and on the West by the remaining portion of Lot 152 and that of the property of Antonio L. G. Blas.

Q. (By the Court): Was that when they were subdivided? [29]

A. No, I asked the people to go ahead with the subdivision. This is merely allowing them to live on the property without charge, otherwise, if I had to charge \$5.00 a month, it would be \$60.00 a year.

(Testimony of Jose C. Manibusan.)

Q. (By Mr. Reyes): Do you have an approximate area of the place?

A. No. My whole property is about five hectares and the space occupied by these people is merely about one or two hectares.

Q. About how many people?

A. About eight or nine houses.

Q. Eight or nine houses on the two hectares?

A. About that, I am not certain.

Mr. Reyes: That is all, Judge, thank you.

The Court: Thank you very much, Judge. [30]

FRANK D. PEREZ

called as a witness hereby and on behalf of the defendants, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Reyes): Will you kindly state your name, your address and your occupation?

A. Francisco Duenas Perez, presently residing at Barrigada. My Post Office Box No. is 188 Agana, Guam. Occupation, presently engaged in business.

Q. You say you live in Barrigada, do you own the land on which you are living? A. Yes.

Q. Did you own this land before the war?

A. No.

Q. Now, do you own it?

A. I purchased this particular piece of property.

Q. From whom did you purchase it?

(Testimony of Frank D. Perez.)

A. From Francisco Martinez Camacho.

Q. Will you describe how big this property is?

A. The property that I purchased from him has approximately two hectares.

Q. And what did you pay for this property?

A. \$2300 cash.

The Court: It has not been established yet when it was acquired.

Q. (By Mr. Reyes): When was it acquired?

A. The early part of 1948, I believe it was around January.

Q. 1948? [31] A. Right.

Q. Is this vendor Francisco Martinez Camacho related to you?

A. He is my wife's uncle.

Q. Is he the brother of your wife's mother?

A. That is correct.

Q. How much did you pay per square meter?

A. With that figure, it would come out approximately \$.10 per square meter.

Q. Do you know the property of Manuel C. Blas, the property of J. M. Torres in Barrigada Village?

A. Yes, I know the properties but which specific ones?

Q. Lot 1074, Manuel C. Blas, Lots 1075 and 1069 belonging to J. M. Torres?

A. Yes, I know the property of 1074, that is Mr. Blas' property and 1075 and 1069 are Mr. Torres' properties in Barrigada.

(Testimony of Frank D. Perez.)

Q. How far away is your land located from him?

Q. (By the Court): You also know 1068?

A. 1068 must be adjoining property to Mr. Torres. I will look at the map.

Q. (By Mr. Reyes): Will you go to the map and show the distance between your property you bought from Mr. Camacho and the properties now in consideration?

A. That property is located here (pointing) about 200 meters here. The nearest property there is from Lot No. 27 to 1069 according to the scale given me which represents one inch to 20 meters. The distance then from that property to 1069 on the junction is 200 meters to the junction. [32]

Q. When you bought this property in January 1948, Lot 1087 was there. Any improvements such as structures?

A. No, there was not a single improvement at the time I purchased the property. It was bare land.

Q. Do you know if there was any improvement or improvements on Lots 1074, 1075, 1069 and 1068?

A. Yes.

Mr. Burnett: Objection, it is entirely irrelevant.

The Court: Objection will be overruled. Your question is were there any improvements on these lots that are in question now in 1948?

A. Yes, there were improvements in the area that you just asked me about. The improvement

(Testimony of Frank D. Perez.)

that I know of was that Route 8 was there, or, in other words, a road was in existence.

Q. (By Mr. Reyes): How about Route 10?

A. So was Route 10 installed or constructed by that time in 1948.

Q. (By the Court): Was there any water?

A. Water in the vicinity only. The only water that I know in the area was the water furnished by the military but no permanent installation in 1948.

Q. No buildings?

A. In my lot 1063, there were buildings but what I said was there was no government water in 1948 other than water supplied by the military in temporary nature.

Q. (By Mr. Reyes): In 1948 were there people living in these properties now under consideration? [33]

A. Yes.

Q. Was there a church on this property?

A. If I remember correctly, the Catholic church was already on that part of that property.

Q. How about schools?

A. Also the public school as far as I can remember. Right in the center of the village itself, there was a school and still there is a public school.

Mr. Reyes: That is all. Thank you, Mr. Perez.

Q. (By the Court): You mean these buildings were put up after the war?

A. That is right, your Honor.

Q. In connection with the village?

A. In connection with the subdivision of the vil-

(Testimony of Frank D. Perez.)

lage by the military in order to place our people in the village organized by the government.

Q. In 1946 the government started using this land for the resettlement of people that had to be evacuated from other places? A. Correct.

Q. In connection with that resettlement, houses such as these were rebuilt and school houses and churches and so forth? A. That is correct.

Q. If you remember correctly, how were people put in this village, were people just permitted to move into those places without paying rent at that time?

A. In the village itself that was the original subdivision prepared by the government. It was under the control of the government and no person, resident or citizen of this territory may move into the building without first getting a permission or arrangement with the military Welfare Department and they also [34] have a requirement, an experience of myself, that you cannot be given a lot and the building in Barrigada unless you have at the time three dependents, so I was disqualified for not having any children at the time.

Q. The government then permitted the people to occupy these residences? Did they rent it from the government?

A. That I do not know whether they pay rent to the government. I don't know for sure whether they paid rent for the use of the government land but at a latter date, the properties were sold to the people residing in those buildings.

(Testimony of Frank D. Perez.)

Q. But the immediate approach of the government was to provide shelter for the people who had been in need of shelter?

A. That is correct.

The Court: Thank you, Mr. Perez.

Cross Examination

Q. (By Mr. Burnett): As I understood you, Mr. Perez, Route 8 and 10 were both constructed prior to the construction of the village, is that true?

A. No, I didn't say it was constructed prior to the village but it is safe to assume. You must have an access. I say it was there in 1948 because when I bought this property I passed through Route 8 and 10.

Q. I am not sure I understood you. You said there was a building on Lot 1069 at the time you bought your property in 1948, is that correct?

A. Yes.

Q. I am not entirely clear whether you are speaking of [35] only Lot 1069 or all three of the lots including 1074?

A. I was speaking of all of the lots in question and including the other lots, subdivision of Barri-gada.

Q. The buildings including the school and the church of which you referred, building constructed by the military as part of the development of the village?

A. It is safe to assume that the military still have complete jurisdiction over the resettlement of

(Testimony of Frank D. Perez.)

the people of this territory and it is safe to assume that the military were the only people here putting up the buildings then.

Q. And they are the ones you said were occupied by just placing people in them with their dependents? A. Yes.

Q. And, of course, other buildings have been put up by individuals; individual owners putting up their own stores. The government's primary duty was to provide shelters for the needed families and all other buildings such as commercial ones were erected by the individual owners? A. Yes.

Q. You spoke, Mr. Perez, of buying this piece of land in 1948. Do you remember the exact date?

A. I did not check on the exact date but if my memory is correct, it is around the 13th of January, 1949.

Q. Can you say whether or not it is 1948?

A. Yes.

Q. You bought it from Mr. Camacho?

A. That is correct.

Q. That lot lies on Route 10?

A. That is correct.

Q. Do you know the percentage on Route 10?

A. If the information you gave me that one inch equals 20 meters then that frontage is three inches or sixty meters, that is the frontage of Lot 1070.

Q. If I remember correctly, you said the area of Lot 1087 was approximately two hectares, can you state the exact area?

A. I do not have the records with me but it is

(Testimony of Frank D. Perez.)

two or little more than two hectares. That is the property I bought from Mr. Camacho.

Q. Is it 36,700 square meters?

A. That was for the whole piece of property including the other side of the road and including that portion occupied by Route 10 and the purchase from Mr. Camacho was the property not counting Route 10 and the remaining of the property on the other side of the road.

Q. In other words 36,000 square meters is the entire lot? A. That is correct.

Q. You bought part of it, is that correct?

A. Right.

Q. Did you ever buy other property in that vicinity? A. Not at Barrigada, no, sir.

Q. Did you ever sell any property in that vicinity prior to 1949? A. No, sir.

Mr. Burnett: Thank you. [37]

MR. EDUARDO CALVO

called as a witness hereby and on behalf of the defendants, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Reyes): Will you kindly tell the court and the jury your name, your address and your occupation?

A. Eduardo T. Calvo, my occupation is an Insurance Agent and Real Estate Broker, Maite, Barrigada.

(Testimony of Eduardo Calvo.)

Q. Do you own any real properties in Guam?

A. I do.

Q. Will you kindly tell the court where these properties are located?

A. I have properties in Asan, Barrigada, Sinajana, Agana Vista, Epan, Agat, Tamuning and Agana.

Q. Do you own any property in Barrigada?

A. I do.

Q. Are you familiar with—do you have any knowledge of land values in Guam?

Mr. Burnett: I object, it is entirely too general.

The Court: Do you have any experience in land values?

Q. (By Mr. Reyes): What was your occupation before World War II?

A. I was Assistant Cashier for the Bank of Guam.

Q. Did you deal with land matters or real estate matters before the war?

A. Yes, good deal of my work entails the inspection of real properties being pledged for security with the bank.

Q. Did this give you any familiarity of the prices in Guam at the time? [38]

Mr. Burnett: Objection to that line of questioning as of prices before the war.

The Court: I think it is clear to the jury that as an Assistant Cashier, he had to pass upon collateral as regards security by lands. Now during this experience and on up to date——

(Testimony of Eduardo Calvo.)

Q. (By Mr. Reyes): Mr. Calvo, what are the circumstances or elements you consider in the determining the value of land?

Mr. Burnett: I must object to that. It calls for conclusion of the witness on the question of law.

Q. (By the Court): Mr. Calvo, did you acquire your land at Barrigada after the war or before the war?

A. I owned it before the war but I have bought lots in Barrigada, various properties since the war.

Q. (By Mr. Reyes): And since the war have you had occasion to make appraisals of property for purposes of investment or otherwise?

A. I note in an official capacity but as real estate man naturally I am interested in the overall values of land in the island and also for a while, I was a member of the Equalization Board of the Government of Guam and had occasion to study and make a survey of land values in Guam.

Q. Are you familiar with this, in general, with land values in Barrigada as of April 1949?

A. Yes, in a way.

The Court: Now, your question, Judge Reyes, is what does an appraiser take into consideration in determining the value of land, is that correct?

Mr. Reyes: Yes, sir. [39]

The Court: Then he may answer that question.

A. According to my understanding and experience with regard to determining land values, these are the pertinent factors in determining the land values and fair market value: (1) Sale price agreed

(Testimony of Eduardo Calvo.)

on between a willing buyer and seller, (2) potential or real economic rental value to the owner or prospective buyer, (3) productive value of the land or use, (4) location of the property. This directly affects the value of property, urban, rural or farm property, all have different values. The availability and accessibility to highways, streets, electric power, water system, temporary schools, churches, markets, telephones and fresh water streams, all affect the actual value of the land. Other things affecting the value are intrinsic as view, temperature, acreage, elevation, steepness of slope and drainage, (5) land use-adaptability and the need for such use at the time of the purchase. This is the general standpoint of government's appraisal. I have made also a study of gathering land information. This is the manual for real property assessment by the government of Guam compiled by the real estate experts of the Jacobs and Company. Sales market data from records of present sales offers asking prices and opinions pertaining to land values. Two, data and opinions on land development trends and uses particularly in new and dormant subdivisions or commercial centers. Three, rental data for use in estimating land value according to the residual process. Four, information regarding neighborhood and condition affecting the values and stability of real property in such areas. Five, unit land values recommended by information from citizens and property owners. These are the basic factors for tax assessment purposes. [40]

(Testimony of Eduardo Calvo.)

Q. (By Mr. Reyes): Mr. Calvo, do you know a place called Barrigada Village? A. I do.

Q. When was this village established and what date did the people start coming into this village?

A. According to my knowledge and also by confirming with the Chief Commissioner of Guam, the village was established in 1945 and 1946.

Q. In 1949 was Barrigada Village a going concern, was it an organized community?

A. Yes.

Q. Were there any churches, schools and stores at that time?

A. Yes, in 1949 Barrigada was already an organized community. Of course, even before the war, Barrigada was a town. You have a commissioner there and you have people living in Barrigada and you have a school house. You have a church; you have an artesian well. That is even before the war, Barrigada was a town.

Q. The village of Barrigada of today is right next to Route 8, do you know when it was constructed?

A. As long as I can remember, even during the existence of the organized village of Barrigada which was in 1945 or 46, Route 8 and Route 10 were there. That is the road to BPM Camp.

Q. Do you know where lots 1074, 1075 and 1069 and 1068 are located?

A. Yes, I know; they are located in the organized village of Barrigada.

(Testimony of Eduardo Calvo.)

Q. Do you know if they have any accessibility to any road?

A. Yes, Route 8 and you have the village roads here.

Q. Do you know if there were any stores, schools and [41] churches on Lots 1075, 1069, 1074 and 1068?

A. Yes, there was a church; there were stores, barber shops, liquor stores and pool halls.

Q. How would you then classify Lots 1074, 1075, 1068 and 1069? A. As to what date?

Q. In 1949?

A. I will classify them as commercial and residential property.

Q. Do you know whether there was any wide differences in the best possible use of these lands in Barrigada between 1941 and April 11, 1949?

A. Definitely, I would certainly say that there was quite a revolutionary change of 1069, 1075 and 1074 since 1941 and at the time the land was condemned in 1949. By that, I mean, the agricultural utilization in 1941 is completely changed to a different use or classification by actual and mere utilization of the lands into commercial and residential uses by the people of Barrigada.

Q. Now, what would be, in your opinion, the fair market value of lots 1069, 1075 and 1074 in 1948 per square meter?

Mr. Burnett: I object on the ground of lack of foundation.

(Testimony of Eduardo Calvo.)

The Court: Objection overruled. He may answer.

A. First I would like to make this observation and also this remark.

Mr. Burnett: I suggest that he should answer the question only.

The Court: I think you should answer the question, Mr. Calvo.

A. Judging from information that I have received and [42] compiled, lands which were formerly agricultural and now utilized for residential purposes, I would say that, and also the fact that in 1948, the Naval Government of Guam was charging \$.02 per square foot for warehouse space which was destroyed by typhoon. In Asan, Agana and Barrigada, I would say a house lot in 1949 is worth \$500 which is 5,000 square feet or an equivalent to \$1.00 per square meter. These are based from actual purchases which I made in 1948 in Sinajana and Agana Vista. The purchases also made in Tutujan, sold by Jose M. Cruz to Rosalia Ojeda in 1949 and to Vicente Munoz, \$1.00 per square meter and also the purchase from Jose M. Cruz, Lot 22-6 to Dominga S. San Nicolas. The George Washington High School was appraised by the government in 1950 at \$1.00 per square meter. Those factors were combined and also my knowledge that Judge Manibusan was being offered in 1948 and 1949, properties which were not comparable, in the neighborhood of \$250 to \$500 per lot. That is how I arrived at the price of \$500 in Sinajana, I mean in Bar-

Testimony of Eduardo Calvo.)

igada. The fact that the land was, in 1949, commercial and residential lots and not agricultural land. That is the basis of my appraisal.

The Court: We have reached the time for the noon recess, so the court will recess until 1:30 this afternoon. Mr. Calvo, of course, will return in connection with the cross examination. Ladies and gentlemen of the jury, your caution during the recess and at all times not to discuss this case among yourselves or to permit anyone else to discuss it with you. Keep your minds completely open until the evidence is in on both sides. That caution will be observed at all times while you are out of the courtroom until the case is given to you for your decision. The court will now recess until 1:30 this afternoon.

(Whereupon a noon recess was taken by the court.) [43]

1:30 p.m.—Trial resumed

(After recess.)

The Court: It is stipulated that the jurors are in place.

Mr. Burnett: If the court pleases, I would like to renew the objection I previously made as to the last testimony of opinions of value given by Mr. Calvo on the ground that it completely lacks foundation. Mr. Calvo testified as to his opinion of values of the lots in question of 1068, 1069, etc.

The Court: That will be overruled.

Mr. Burnett: And I move that it be stricken.

(Testimony of Eduardo Calvo.)

The Court: It will be overruled.

Cross Examination

Q. (By Mr. Burnett): Mr. Calvo, I have only a couple questions. You testified that there was a very great change in use of lots 1068, 1069, 1074 and 1075 between 1941 and 1949. Isn't it true that the change in use occurred after World War II?

A. Right.

Q. So that during World War II to the extent that these lots were used, they were used for agricultural purposes, isn't that correct?

A. Yes and no. The occupation by the Japanese forces in Guam in 1942 brought about also a change in the habits of living of the people of Guam. Prior to the war, the people of Guam were more or less city dwellers. They were all living in Agana. You will see now what we have—now the condition existing regarding with the dormant development of Agana.

Q. What I am getting at is that the principal use of these [44] lots during the war was for farming purposes, although the owners may have evacuated?

A. There is also that change since 1941, the people were forced by the Japanese to scatter all over their properties in Barrigada and being close proximity to Agana, people went out and built their permanent homes. There were a lot of people living in Barrigada during the occupation of the Japanese. There is also the fact that they have been

(Testimony of Eduardo Calvo.)

indoctrinated in the value in living in an open area where it is healthful, where the land is also elevated and it has been proven by the naval authorities before the war that the more elevation — the higher the elevation in which you live in Guam the less humidity you will have.

Q. What I am asking you is what was the principal use of lots 1068, 1069, 1074 and 1075, was it agricultural during the war?

A. Yes, because agriculture remains the occupation of Guam.

Q. The principal use of those four lots was agricultural until the village of Barrigada was established? A. Right.

Q. The present village of Barrigada was established after the war, wasn't it? A. Right.

Q. And initially the layout of its streets were made finally by the military or Naval Government of Guam, was it not? A. Right.

Q. And originally the dwellings were built by the military?

A. Yes and no because some people, before the military controlled, those lands there, were living around that area surrounding the area where Barrigada village was not made available to the people.

Q. What I am asking about lots 1068, etc., and even 1075 [45] taken by the Naval Government of Guam is a part of the permanent side of the village of Barrigada. The development of those lots was made by the military, was it not?

A. Definitely.

(Testimony of Eduardo Calvo.)

Q. The development of those lots and the establishment of the permanent site of the village of Barrigada was rehabilitation to provide homes for the people, isn't that true? A. Yes.

Q. I have just one other question, Mr. Calvo. You testified that there was prior to the war a town of Barrigada, and I ask you to step down to the map and point out the boundaries of the town of Barrigada which you said existed before the war?

A. I don't know whether it is located here but I know it is located where Barrigada, beyond the junction there on Route 10 and Route 8, that is where the old Barrigada Village was situated.

Q. Does it show on that map?

A. I can't tell here. I would say towards this area (pointing).

Q. How much area did it occupy?

A. That I don't know but there was quite a community. There was a schoolhouse; there was a church; there was an artesian well.

Q. How many people were living in that town?

A. If I had known you were going to ask me that question, I can make inquiry.

Q. Can you say approximately?

A. No, I wouldn't guess.

Q. How much area was called the municipality of Barrigada, not the town, not the village. How large an area is that?

A. In square miles? [46]

Q. Yes.

A. Well, I don't know. I can't tell you offhand

(Testimony of Eduardo Calvo.)

because there is also some confusion about the boundaries of Sinajana and Barrigada.

Q. Just approximately, please. We don't have to be too exact, just approximately?

A. Again I wouldn't gamble.

Q. Do you know what the prewar population of the entire municipality of Barrigada was?

A. Six or eight hundred.

Q. Including those in the town?

A. Right.

Mr. Burnett: Thank you, Mr. Calvo.

Redirect Examination

Q. (By Mr. Reyes): Mr. Calvo, the construction of Route 8 and Route 10, do you know if those big highways were constructed for the purpose of enhancing the value of the lands in Barrigada or was it for some other purposes?

A. I can only say that it was constructed for defense purposes and it was not constructed for rehabilitation purposes.

Q. Can you think of any reason why those tracts of land, 1074, 1068 and 1069 should be or maybe were classified as agricultural land in 1949?

A. The most possible and evident reasons I can think of how these lands, lots 1069, 1074 and 1075 could have possibly been classified as agricultural land by any land appraiser in 1949 can be attributed as follows: (1) First that these lands were classified in 1941 for tax purposes as agricultural land; [47] (2) that the land appraisers may have been

(Testimony of Eduardo Calvo.)

very much influenced by their appraisals in 1946 which by law, that is the Guam Meritorious Act, allowing property owners who were deprived of the use of their lands from 1944 to 1946 to claim compensation only from the Federal Government for the use of their lands on the basis of the land evaluation of their properties in 1941. These 1946 appraisals of land evaluation by 1941 standards may have been carried over or used in 1949 to arrive at the evaluation of the lands in question. That there may have been a misunderstanding on the part of the land appraisers in 1946 who were only allowed by law to use the 1941 land values for the 1944 to 1946 appraisals in granting and paying compensation for loss of use of properties during the period 1944 to 1946 and the interests of property owners which entitled land owners for properties or land taxed subsequent to 1946 to a fair market value or just compensation at the time of the taking which in this case was in 1949 and not in 1946——

Mr. Burnett: I object to assuming facts that are not in evidence, away from all of the issues of the case. I object to any continuation of the line of questioning.

The Court: Well, the question was not objected to until this time. I will permit Mr. Calvo to finish his answer.

A. You will find that there were a little appraisals of these lands in 1949 as to the best possible use at the time of taking in 1949. Because of this factor

(Testimony of Eduardo Calvo.)

of the 1946 appraisals which allowed only property owners to use 1941 values. That is how I can answer why it was classified as agricultural land is the fact that it must be a misunderstanding because 1946 or 1941 uses of that land was different than in 1949 which was the time that we are now trying to determine the fair market value.

Mr. Reyes: Thank you, Mr. Calvo. [48]

Q. (By the Court): Now, Mr. Calvo, I would like to ask you a question to clarify this picture. In 1941, except for people who settled during the war in that general area, this land was agricultural land, is that correct? A. In 1941?

Q. Yes, except for those that you mentioned that moved out of Agana or possibly moved out by the Japanese?

A. Yes, the greater portion of it was used for agricultural land but like I say, your Honor, in 1941 there was already a schoolhouse in Jalaguac which is a part of Barrigada where the Naval Air Station and another school in Barrigada itself. The town of Barrigada and in 1942 when the Japanese occupied Guam, the people scattered all over their lands in Barrigada. I cannot visualize if those lands were made available in 1945 or 1946, whether the people will again organize because there was already an organized community in Barrigada in 1942.

Q. During the process of return of the Armed Forces in Guam, the city of Agana which has been the residential center of Guam was already com-

(Testimony of Eduardo Calvo.)

pletely destroyed? A. Right.

Q. The Armed Forces were being confronted with the fact that large numbers of people had completely lost their homes and had no place to live? A. Right.

Q. And those were largely in the City of Agana?

A. Right.

Q. Coincidentally with that, the Naval Government of Guam was thinking at least in terms of rebuilding Agana as a model city and had a master plan within the frame work of that master plan [49] even if people were able to rebuild Agana, they were not able to do so, were they?

A. There was some rebuilding, those who actually stayed in Agana but the fact that the naval authorities wouldn't allow them.

Q. The naval authorities wouldn't allow anything except the master plan that was being put in effect?

A. It took an act of congress to get them out of their properties but another thing, your Honor, that I will like to point out is the fact that the people in Agana had homes in Agana, lands in Barrigada or Sinajana during the Japanese occupation or more or less have two homes, one in Agana and one in Barrigada.

Q. Now they were confronted with the necessity of reestablishing people, as I understand it, in the town or village of Barrigada. Of course the government proceeded to lay out roads and to take over lands and to build housing for people?

Testimony of Eduardo Calvo.)

A. Right.

Q. And then the people settled there and there has been very little change from that day until today?

A. Right.

Q. Including the use of this land for that purpose, now that was done in '45 and '46?

A. That is right, but on the other hand, your Honor, where places are comparable in Barrigada, where the naval authorities did not hold back their hands, you find people going out there without any subdivision to establish their homes, their like, for instance, Agana Heights was not an organized community before the war. Sinajana outside the village, yes, you will find people.

Q. From the standpoint of real estate, if a person builds a home in a rural area that doesn't make it a residential property, does it? [50]

A. No, but when you find so many people moving into one area, becoming organized, they were starting an organized community, for instance, Agana Heights.

Q. But this development in Barrigada was almost entirely due to the fact that the government had made facilities in Barrigada?

A. Right.

The Court: Thank you very much, Mr. Calvo.

Mr. Reyes: Defense rests. [51]

JOSE L. G. BITANGA

called as a witness hereby and on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Burnett): Will you state your name, address and occupation?

A. Jose L. G. Bitanga, Sinajana, Appraiser for the Department of Navy.

Q. How long have you been an appraiser for the Department of the Navy?

A. Way back in 1940 to 1946. At present I am an appraiser for land condemnations.

Q. Since 1946 you had been employed?

A. Employed by the Land and Claims Commission.

Q. You mean in 1946 you were employed by the Land and Claims Commission and since that time you have been employed by the Area Public Works or Base Development?

A. After the Land and Claims, Base Development and then the Area Public Works Office.

Q. Before your employment as an appraiser with the Land and Claims Commission, what work did you do?

A. Naval Government appraiser for tax purposes, for real estate property for the Island of Guam.

Q. For how long? A. Since 25 to 30 years.

Q. During the time you have been so employed as an appraiser in connection with real estate be-

(Testimony of Jose L. G. Bitanga.)

fore the war with the Naval Government and since the war with the Land and Claims Commission, have your duties required you to be thoroughly familiar with the lands in Guam? [52]

A. Yes, sir.

Q. Will you state whether or not you have traveled around the island looking at properties?

A. Every three years we visit each and every property in Guam.

Q. Was that prior to the war?

A. Prior to the war.

Q. And since the war, did you as an appraiser travel around the island looking after these properties?

A. January, 1945, yes, the military government started the real estate appraisals in 1945 up to June when we completed it.

Q. And since then you have been an appraiser with the Navy. Didn't that job require you to go around looking at various properties?

A. Yes.

Q. In the course of going around Guam looking at individual properties, Mr. Bitanga, did you have occasion to look at and become familiar with the lots in Barrigada? A. Which lot?

Q. Well, first, just in general, were you familiar in general with lots or lands in Barrigada?

A. Each and every lot as I stated before that we visited every three years.

Q. Were you then before the war familiar with lots 1068 or 1069, 1074 and 1075?

(Testimony of Jose L. G. Bitanga.)

A. Yes, sir.

Q. Were you familiar with those lots during the war? A. During the Japanese?

Q. Yes.

A. I can't say because I was never there during the [53] Japanese occupation. I was confined at the city of Agana.

Q. Were you again familiar with those four lots after the war? A. Yes, sir, in 1945.

Q. Prior to the war, Mr. Bitanga, what use was made of lot 1068?

Mr. Lamorena: We object to the line of questioning, your Honor, of the value of the land in 1941 or any time before the war.

The Court: Objection overruled.

Q. (By Mr. Burnett): What was the use of lot 1068 prior to the war?

A. Agricultural land.

Q. How about 1069? A. The same.

Q. 1074? A. The same.

Q. 1075? A. The same.

Q. How about after the war, can you say whether or not all four of those lots were used for agricultural purposes?

A. After the war, part——

Q. After the war and before the establishment of the village of Barrigada?

A. Before the establishment, it was still farm land, somebody living there farming. All the naval government was making was a subdivision for the new village of Barrigada rehabilitation.

Testimony of Jose L. G. Bitanga.)

Q. Before that subdivision of the village of Barrigada, that was farm land? A. Yes.

Q. Do you remember, Mr. Bitanga, when that village of [54] Barrigada was established, what date?

A. Sometime in 1945 when the military government bulldozer started working there, making the streets and roads for the village.

Q. What village, who built the houses?

A. The military government.

Q. In other words the village had existed in April, 1949. Was the village built by the military government, is that right?

A. That is right.

Q. Do you know approximately what was the population of the municipality of Barrigada before the war?

A. Eight hundred or more, little bit more, around eight hundred or more.

Q. Was there a town of Barrigada before the war? A. Never been a town or village.

Q. Was there a school and a church there?

A. There was a school and also a church.

Q. Where were they to the present school?

A. Very far up in the Radio Barrigada.

Q. North or East from where the village is now?

A. Lot 2238 where the San Roke Chapel is located and 22 or 5-1, 206-3 and 2205 where the school, Barrigada school is located.

Mr. Burnett: I have no further questions.

(Testimony of Jose L. G. Bitanga.)

Cross Examination

Q. (By Mr. Lamorena): May it please the court, ladies and gentlemen of the jury, Mr. Bitanga, you said that there was no village nor town called Barrigada before the war? A. No.

Q. When you say village, what is the picture of a village? [55]

A. Subdivision, an organized community, just subdivision houses and roads.

Q. Did you say how many schools were at Barrigada before the war?

A. You cannot call that——

Q. How many schools there were in Barrigada?

A. There were two schools, three schools within the radius of Barrigada municipality—one in Barrigada, one in Price and another one in Tijan it Maite or Mapas.

Q. How many churches were there?

A. One chapel, that is San Roke Chapel in Barrigada.

Q. How many people living within the vicinity of the school and the church?

A. All the people are living within the radius of Barrigada district, eight hundred or eight hundred and fifty, something like that.

Q. Are you taking it partly or just casually that go there and come to live in Agana whenever they want to?

A. They are living in their ranches and sometimes they come downtown once a month.

Q. Did they have houses there?

Testimony of Jose L. G. Bitanga.)

A. They have houses and properties.

Q. Are those houses well built or were they
shacks?

A. Some have shacks, some concrete building
and some with iron roof.

Q. Isn't it a fact that there were some concrete
buildings there before the war?

A. Some, in fact, Joaquin Rabon have concrete.

Q. How about the Cepedas?

A. They have buildings with iron roof. [56]

Q. With all those facts presented, would you
not consider that place as a village before the war?

A. No.

Q. But you said that you do not consider that
place as a village because there was no subdivision,
what do you mean by a subdivision?

A. Blocks and lots for building, that is subdivi-
sion and houses are gathered in one place and
road, that is an organized village. You cannot
call that organized village, country—houses living
in the wrong property. Every house is about 500
meters apart; the closest neighbor is around 45
meters.

Q. Do you know a place called Barrigada?

A. No.

Q. Municipality of Barrigada?

A. Only in 1925 or '27 when they appointed a
commissioner of Barrigada.

Q. I mean was that place called Barrigada?

A. Yes.

(Testimony of Jose L. G. Bitanga.)

Q. When a place is called a municipality, could it be a village or town?

A. No, not necessary to have town to call municipality.

Q. I invite your attention to see the lots in question, by looking at lot 1075 and 1069 or I would rather say dividing lots 1075 and 1069 and crossing on the North of Lot 1074, what is that tracing down there (pointing) represent?

A. What do you mean?

Q. This one (pointing to the chart)?

A. Price road cutting through the property of Torres.

Q. What? A. Canada road. [57]

Q. Well developed road before the war?

A. Just ten feet wide.

Q. Motor vehicles before the war passed through that place? A. Yes.

Q. Judge, you said that Barrigada was being taken for purposes of rehabilitation, am I right?

A. That is right.

Q. You said that you worked for the Navy for quite a long period of time as an appraiser, is that right, Judge? A. Yes, sir.

Q. And you said that 1074, 1075, 1069 and we shall also include 1068 for purposes of this question were all agricultural properties before the war? A. That is correct.

Q. In 1949, April 11, Judge, what was the best available use of these four lots?

Mr. Burnett: Objection.

(Testimony of Jose L. G. Bitanga.)

Mr. Lamorena: Very pertinent, your Honor.

The Court: Before January, 1949?

Mr. Lamorena: April, 1949, I am asking what kind of properties?

The Court: Objection overruled.

A. It was taken by the military government for rehabilitation purpose to house those people, lots of families were in small shacks in Bradley Park, some in Finele, Agat.

Q. (By Mr. Lamorena): My question is simple, Judge. On April 11, 1949, will you kindly state to the jury what were the uses of these four lots in question?

A. It is already organized village by the military government. [58]

Q. Shall we also consider it as part commercial because there were business establishment also?

A. Just some stores that they put up, stores and poolhalls.

Q. (By The Court): Judge Bitanga, what was the value of these properties before the government started developing these lots?

A. \$100 to \$200 a hectare.

Q. \$100 to \$200?

A. \$100 to \$200 together with the improvement, the retaking of the Armed Forces of the United States the Island of Guam.

Q. There are how many square meters in a hectare?

A. It is one hundred square meters in a hectare—10,000 square meters.

(Testimony of Jose L. G. Bitanga.)

Q. Do you mean then that the land at that time already was worth \$.01 to \$.02 per square meter?

A. Something like that.

Q. For agricultural purposes?

A. For agricultural purpose.

Q. (By Mr. Lamorena): What was the basis of your computation for telling the court the price per hectare in Barrigada is from \$150 to \$200?

A. A hectare, \$200 to \$300 a hectare. It all depends whether there is no improvement, \$100 or \$150.

Q. Is that all you took into consideration whether there was improvements or no improvements? A. Yes.

Q. Did you not consider in your computation the best possible use of the land at the time?

A. Yes, some built roads, water and land, telephone, some taken into consideration. [59]

Q. And you said that April 11, 1949, lots 1074, 1075, 1069 and 1068 were residential or commercial places at the time? A. Most——

Q. Poolhalls and business establishments——

A. That is in the village.

Q. When you answered the question of the court, were you basing it on the fact that they were previously agricultural lands?

A. Yes, previously agricultural lands.

Q. The basis then was merely agricultural?

A. Yes.

Mr. Lamorena: Thank you, Judge Bitanga.

The Court: Witness may be excused. Call your next witness. [60]

WILLIAM A. WOELFL

called as a witness hereby and on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Burnett): Will you please state your name, address and occupation?

A. William A. Woelfl, 4015 Apra Heights. I am employed as a real estate appraiser, United States Navy.

Q. How long, Mr. Woelfl, have you been employed as a real estate appraiser for the Navy?

A. Since February, 1947.

Q. Prior to that what was your occupation?

A. Between the years 1924 and 1932, I was a real estate broker in New York. In 1932 I was employed by the Office of the Real Estate Expert for the City of New York and assisted in the preparation of cases for trial of all the properties taken in condemnation by the City of New York. From 1939 to 1947 I was employed by the Home Owners Loan Corporation of 2 Park Avenue, New York City. From 1939 to 1947 I made appraisals in the states of New York, New Jersey and Pennsylvania. In 1947 I transferred to the Department of Navy and arrived in Guam on the 13th of February, 1947.

Q. During the course of that experience, did you have occasion to appraise the different types of classification of real estate in different parts of the United States? A. I did.

(Testimony of William A. Woelfl.)

Q. And for what purpose did you make such appraisals for different kinds, I think you mentioned condemnation, did you make appraisals for any other purpose?

A. My appraisals determined the market value of various [61] city and country properties for the purpose of disposing of their repossessed properties. There was over two hundred thousand properties owned by the Home Owners Loan Corporation at that time.

Q. In other words since 1925, I believe you said, you have been engaged in the Real Estate appraisal business? A. That is right.

Q. In one way or another, as broker or appraiser for a Federal Agency or for the Navy?

A. That is right, since 1939 as an appraiser.

Q. Mr. Woelfl, would you say approximately how many tracts or parcels of real estate you have appraised in Guam?

A. I would say over 5,000.

Q. During your experience as appraiser, have you had occasion to testify as an expert witness on the values of the land in court? A. I have.

Q. Approximately how many times have you been so called upon to testify as an expert?

A. Offhand I couldn't say.

Q. Has it been often or only seldom?

A. Maybe three, four or five times here in Guam.

Q. How about before you came to Guam?

A. Yes.

(Testimony of William A. Woelfl.)

Q. Would you say whether or not, Mr. Woelfl, you made appraisals and made investigations of values in connection with the tracts we are now trying, the lands that were taken on April 11, 1949, did you make appraisals in that case?

A. I did.

Q. Did you make an investigation or appraisals to ascertain the values as to all of the lands taken in that case? [62]

A. I did.

Q. I will call your attention to specific parcels of land, Mr. Woelfl, tract No. 2 in this case which is four hectares plus 144 square meters of Lot 1074, Barrigada, did you make an investigation and an appraisal to determine the value of that tract?

A. I did.

Q. Tract No. 4 which is 7 hectares plus 2126 square meters of Lot 1069, Barrigada, did you investigate to make appraisal to determine the value of that land?

A. Yes, sir.

Q. Tract No. 15, consisting of 1 hectare plus 480 square meters of Lot 1075, Barrigada, did you make appraisal and investigate to determine the value of that tract?

A. Yes.

Q. And Tract No. 5, 3455 square meters of Lot 1068, Barrigada, did you make an investigation and appraisal to determine the value of that tract?

A. Yes, sir.

Q. In the course of your investigation and appraisal, Mr. Woelfl, did you make these investigations to determine whether they were in the vicinity that is close to Barrigada Village or whether

(Testimony of William A. Woelfl.)

there are voluntary sales of similar lands during the year 1948 or 1949, did you investigate; did you gather any information of such sales?

A. Yes, sir.

Q. How many sales did you find which in your judgment were usable for basis for evaluation?

A. Nine.

Q. Will you state for the court and the jury the basic information summarizing each of those sales and as you refer to [63] each sale, will you mark the map so that the jury may see where the sale was?

A. Yes, sir. Lot 1075, Place of San Antonio, Francisco M. Camacho to Francisco D. Perez. The original taking is 36,706 square meters consideration of \$2300. The date of the sale, January 13, 1948.

Q. Mr. Woelfl, let me ask you whether you examined the record of that transaction?

A. One of my staff examined it for me.

Q. Go ahead?

A. Lot 1100-1 sold by Francisco M. Camacho to Jose C. Manibusan, area of 24,980 square meters, \$1,000, per hectare unit price of \$400. The date of the sale was May 11, 1948. Lot No. 2304, Jose W. White and Jose Minor, 40,192 square meters, \$150. The date of the sale is July 17, 1948, unit price of \$37.00 per hectare. Lot 2294 Part, Place of Lalo, sold by Jose A. Minor to Manuel M. Santos, area of 4,382 square meters at \$200 on November 30,

(Testimony of William A. Woelfl.)

1948, unit price of \$450 per hectare. Lot 2233, place of Ungaguan, sold by Cristobal R. Santos to Tomas S. Tanaka, area of 41,047 square meters, sale price is \$200, sold on December the 10th, 1948, analyzing average price \$48.00. Lot 2427, Place of Corten Torres, sold to Peter Cruz, area of 45,000 square meters, consideration of \$1500, sold on December 22, 1948, average per hectare \$330. Lot 2087 sold by Jose Salas to Peter L. G. Guerrero, an area of 85,094 square meters, consideration was \$800, sold on December 30, 1948, cost per hectare, \$84.00. Lot 2294 Part, Lalo, same lot by Jose A. Minor to Juan C. Flores, area of 1918 square meters, sale price is \$200, sold on April 22, 1949, shows an average unit sale price of \$1,040 per hectare. Also another piece of 2294 Part, Jose Minor to Josefa Okada, area [64] of 1,465 square meters sold for \$100 on April 22, 1949, consideration of the average cost per hectare, \$680.

Q. Mr. Woelfl, are these sales which you have described all of the sales which you found in the vicinity which you considered usable as basis for opinion or evaluation of the lots in question?

A. Yes, sir.

Q. What was the average sale price of the land which land sold in the sales which you have found?

A. The average cost of the nine sales was \$230 for a hectare.

Q. Did you find the indication for the differences of values depending on roads and frontage?

A. Not consistently.

(Testimony of William A. Woelfl.)

Q. Would you say whether or not in your opinion land with road frontage has greater value?

A. Yes, sir.

Q. After your investigation were you able to form an opinion of the fair market value of each of these separate tracts as of April, 1949?

A. Yes, sir.

Q. In forming your opinion, Mr. Woelfl, would you say whether or not you evaluated land fronting on the road as higher land? A. Yes, I did.

Q. Approximately how far from the road did you go in? A. Fifty meters.

Q. One hundred seventy feet, approximately within 170 feet?

A. Roughly little less than that.

Q. What then, Mr. Woelfl, in your opinion was the fair [65] market value of the four hectares of Lot 1074 Barrigada? A. \$1220.00.

Q. What in your opinion was the fair market value of Lot 1069 Barrigada on April 11, 1949?

A. \$2,860.00.

Q. What unit evaluation did you use on that block?

A. \$600 for the frontage and for 190 coconuts, \$295.00.

Q. And the entire lot was \$360 per hectare?

A. \$360 for the entire parcel.

Q. What in your opinion was the fair market value on 11 of April, 1949 of the $\frac{1}{3}$ hectare, 3455 square meters of Lot 1068? A. \$225.00.

(Testimony of William A. Woelfl.)

Q. What unit evaluation did you make of Lot 1075?

A. \$250 per hectare and 65 coconut trees.

Q. That is on Route 8 and Route 10?

A. Yes. The total is \$565.00.

Q. What in your opinion was the fair market value on April 11, 1949 of the 3450 square meters taken of Lot 1068?

A. It was all valued at \$600 per hectare and four coconut trees I was giving \$20.00, the total was \$225.00.

Q. You say \$600 per hectare that is your unit evaluation, is that because all of that parcel was frontage?

A. Yes, sir.

Cross Examination

Q. (By Mr. Lamorena): Mr. Woelfl, inviting your attention to the first two sales at the bottom, closest to you, those are made on the 11th of April, 1949 and April 12, 1949 or on the same date and on the same month when these lots 1074, 1075, etc., were taken? May I [66] ask you this question, isn't it a fact that those lands I am referring to are purely agricultural lands?

A. You referred to 2294 Part, part of it was agricultural land but the area is so small in comparison to the other site sold for residential use for houses.

Q. Mr. Woelfl, on April 11, 1949, what was the use of Lot 1074, 1069 and portion of Lot 1060?

A. Part of the village of Barrigada.

(Testimony of William A. Woelfl.)

Q. Inviting your attention to 1087, do you mean to say that the road is still part of that lot?

A. Still under private ownership. I have a copy of the description with me and the description as recorded covers the entire lot.

Q. Do you know the relationship between the seller and the buyer in the Perez, Camacho case?

A. I think they are related by marriage of the grandchildren.

Q. With respect to Lot 1100-1 that was sold by the estate of P. T. Camacho to Judge Jose C. Manibusan, isn't it a fact that that was agricultural land only? A. Yes, sir.

Q. Referring to Lot No. 1074, one of the lands involved in this case, is it not true that it fronts Route 8? A. Yes, sir.

Q. Referring to Lot 1069, isn't it a fact that it also fronts Route 8 and 10?

A. Yes, they all front the road except the one lot.

Q. And the same holds true with Lot 1068?

A. Yes.

Q. Isn't it a fact, Mr. Woelfl, that Lot Nos. 1074, 1075 and 1069 had the benefit of a good road before the government condemned those properties, the old road which was used by the people before?

A. It was a narrow road.

Q. But it was quite a good road?

A. Yes, it was one of the main roads.

Q. In the course of your investigation with respect to sales, did you come across a sale made by

(Testimony of William A. Woelfl.)

the estate of V. P. Camacho to Juan Blas Manibusan and Ana M. Manibusan?

A. What was the Lot No.?

Q. It is Lot 1099-12.

A. Offhand, I couldn't say. I have the records in the office—several hundred conveyances.

Q. Did you investigate a sale in 1948 made by the estate of V. P. Camacho to Mr. Lorenzo Siguenza?

The Court: And where is the property located?

A. Located near the place where Judge Manibusan's property is located. I must give you the same answer. I couldn't rely on my memory. I found no consideration in the area.

Q. (By Mr. Lamorena): Did you also investigate, Mr. Woelfl, a sale made by a certain individual by the name of Joaquin Borja Santos in 1949 to Thomas Santos, the postmaster located in Barrigada?

A. I must give you the same answer.

Q. Mr. Woelfl, you said that Lots 1074, 1075 and 1069 were commercial and residential on April 11, 1949. Will you kindly explain to the jury why in 1949 you used units on Lot 1074 of 3200 square meters at the rate of \$600 per hectare and \$250 per hectare for the remainder when a sale in the same month represented \$1,040 per hectare on the sales map those appearing below the one closest to you in the map, why?

A. For the same reason, I didn't take the low

(Testimony of William A. Woelfl.)

sales that show on the map. I took an average of sales ranging from \$37 a hectare. [68]

Q. I invite your attention to Lot 1067 and Lot 1100-1—— A. Those units——

Q. Lot 2427, Lot 2304 and Lot 2234 as were sold in the year 1948, will you kindly tell to the jury the relative prices of lands from 1948 to 1949 by taking Lot 2294 on a proportionate basis?

Mr. Burnett: I object.

The Court: Objection sustained.

Q. (By Mr. Lamorena): Mr. Woelfl, from the taking you have made thereof, you will notice the increase of prices from 1948 to 1949, is that right?

A. No, there was no substantial increase. In fact I have sales in the early part of 1948. Prices were very inconsistent; they ranged from very low to high and came out to the value that represents the sale. It would be unfair to take high sales or extremely low. My approach is to try and strike an average which is what I have done.

Q. Was that your only support of the value represented by sales you considered in determining the values of Lots 1074, 1075 and 1069?

A. That is the best proof I know of.

Q. Did you consider the fact of the existence of Route 8 and 10?

A. I did, that is the basis of \$6.00 a unit.

Q. Mr. Woelfl, you said that you have had more than 5,000 cases of this kind? A. Yes, sir.

Mr. Burnett: No questions. Plaintiff rests.

The Court: Any rebuttal? [69]

Mr. Reyes: No rebuttal, your Honor.

The Court: I am going to excuse the jury until 9:30 tomorrow morning at which time you will hear final arguments and the instructions of the court in order that you may have more time in which to consider your verdict without being pressed for time. Please bear in mind the admonition of the court not to discuss the case among yourselves or permit anyone else to discuss it with you, so that any impression you receive will be based solely upon the evidence. The jury may now leave and we will meet again tomorrow morning at 9:30.

(Jury was excused at 3:00 p.m.)

Mr. Burnett: If the court please, I move the court to strike the opinion of values expressed by the witness Mr. Eduardo T. Calvo on the grounds that by his own testimony, Mr. Calvo did not show that he is a qualified witness to express those opinions and no foundation was laid of such knowledge as necessary to testify on his opinions of value of lands in question. I further move the court to direct a verdict based upon the testimony produced by the plaintiff's witnesses on the grounds that there has been no relevant presentation by the defendants to support a verdict. That motion is submitted with respect to all four of the tracts in question.

The Court: Your motion will be overruled or denied as to the question of Mr. Calvo's qualifying to testify but on the second part of the motion, there was nothing in any of the testimony intro-

duced on behalf of the defendants to enable this jury to determine values. Mr. Calvo did not break down these values according to lot, according to locations, according to being on the highway or not being on the highway. The only testimony that Mr. Calvo gave was that the property was worth \$1.00 per meter. [70]

Mr. Burnett: That is on the basis of the other lots.

Mr. Reyes: Mr. Calvo based his evaluation per square meter on the sales around the vicinity, the approximate places around this particular lot and he pointed out that these lots were residential in 1949.

Mr. Burnett: He testified as to lots in Sinajana, Agat and Agana Heights, values of commercial properties, not one particular lot involved was worth a particular sum of money, not with reference to any of the lots presented was there any evidence at all.

Mr. Reyes: He said these lots are and still are and shall not be given residential prices, I mean they were residential.

The Court: It should not be given as agricultural land. The government concedes that the testimony of the value is based upon the value of the lots on April 11, 1949 as residential, so the government is not insisting that these lots be valued for agricultural purposes. Mr. Woelfl's testimony is that they are residential and business. How do we expect the jury here in view of your evidence to be able to arrive at any verdict based upon, solely

pon the testimony based upon those witnesses. Your expert witnesses do not give any help, do not testify that these lots are worth any amount of money because they are on the road or on the corner or this lot is worth less because it is inside and it is not available for——

Mr. Reyes: I remember a question that was propounded to Mr. Calvo asking for his opinion and he testified \$1.00 on the lots 1069, 1074 and 1075.

The Court: I recall that Mr. Calvo used the only figure that of \$1.00, and it was not broken down into the different locations. [71]

Mr. Reyes: In 1949 that was a residential lot and it did not make any different, or much differences, whether it was fronting Route 8 or Route 10. They had all kinds of access inside the village.

Mr. Burnett: Are you trying to say that all lands in Barrigada are worth \$1.00 per square meter?

Mr. Lamorena: Yes.

The Court: You mean to say that this court could possibly uphold a jury verdict of \$4,100.40 for Lot 1074, Tract 2 or \$72,126, Tract 4 or part of 1069 for land that was agricultural admittedly taken by the government as a matter of rehabilitation and care for the hardship of our own people here.

Mr. Lamorena: I think that is for the jury to determine.

The Court: Based upon what?

Mr. Lamorena: We have evidence on the lots in question.

The Court: Have you got a single case, single instance of any property that was sold for \$1.00 square meter. You questioned the importance of those sales; you didn't present any evidence at all as to those sales that have been made. Now if this jury relies on your side of the case, certainly some information, as the government gets it, as to what its opinions are based on if you have the sales of the land at this particular time which is the basis of its market value. The court must ask why didn't you? I can't permit this jury to guess without having something in the way of foundation to go on.

Mr. Lamorena: Your Honor, please, the jury will accept the expert witnesses, all witnesses presented.

The Court: Mr. Calvo didn't even begin to tell that something has been paid and didn't even indicate, your own witness is a witness that testified to his purchase and the government [72] accepts that valid purchase and uses it as part of the basis of its own evaluation. Frank Perez' purchasing of the property, they give to the jury as an example of reasonable value. His testifying as an expert witness is in a different category. He was testifying to something different, and having testified, he must be able to demonstrate as Mr. Woelfl demonstrated that he is basing it upon actual sales that have been made, not upon venture.

Mr. Reyes: Mr. Calvo read many sales at their market values.

The Court: In Barrigada?

Mr. Reyes: Yes.

The Court: The jury cannot guess at that. I shall have to direct a verdict for the government based upon the government's testimony upon the grounds that there is no evidence offered before the court as to the value of the lands. The court, therefore, orders that a judgment be prepared as follows: On Tract 2, part of Lot 1074, judgment in the amount of \$1,220.00; Tract 4, Lot 1069, 72,120 square meters, judgment will be entered in the amount of \$2,860.00; Tract 5, Lot 1068, consisting of 3455 square meters, judgment will be entered in the amount of \$225.00 and Tract 15, Lot 1075, judgment be entered in the amount of \$565.00. Those are the figures testified by the government. When the jury comes in at 9:30 in the morning, I will explain to them that I find it necessary to direct a verdict in this case as I simply could not let this go to the jury with the testimony at its present stage.

Mr. Lamorena: May we have our exceptions?

The Court: Sure. In those amounts that I have entered, the order is as of now. I will be available not later than 8:30 in the morning. In the interim period you can bring in any evidence that will justify me in entering a different order. The [73] court will recess until 9:30 tomorrow morning.

(Whereupon at 3:20 p.m., a recess was taken by the court.)

April 9, 1957—9:30 a.m.—Jury reports.

The Court: The record will show that the jurors are present. Ladies and gentlemen of the jury, I am sorry that I had to call you back this morning after you were excused yesterday afternoon. Certain developments occurred in this case which I shall explain to you. The law is that when any question of fact is before the court and jury, it is the responsibility of the jury and the exclusive responsibility and belief of the jury to determine that question of fact. If, however, there are no facts before the jury, no competent evidence before the jury upon which it could make a finding of fact, it is the responsibility of the court as a matter of law to direct what the law requires. Now after you left yesterday afternoon, the government moved for judgment in this case based upon its testimony. The court has held that that motion had to be granted and that judgment as a matter of law should be entered on the basis of the testimony of the government's witnesses. Now the reason for that is this, expert witnesses are of course permitted to testify on actions of this kind. Opinions or evidence when presented to the jury must be based upon sufficient study and detail knowledge of the situation so that the jury would be at liberty to accept if it is so desires, the conclusions of those expert witnesses. Now in this particular case, the only figure that you had before you was Mr. Calvo's testimony that in his opinion this land involved was worth \$1.00 a square meter on April 11, 1949. There was no evidence of research to

justify that conclusion. In other words if the jury had accepted that testimony [74] at \$1.00 per square meter, at that time, in no circumstances would the court have upheld that verdict. That would have meant that when the military officials were confronted with necessity for finding homes, places to live for people who had been made homeless by the exigencies of war when the military had taken over this agricultural area and had built temporary homes, that is all they were, in order to provide housing for the people and then had taken the title to that land three years later; that the former owners of this agricultural land should be paid for that land upon the basis that it was a build-up residential area. It is elementary in law, ladies and gentlemen of the jury, that the government's necessity may not become the land owners opportunity. Consequently you had before you only the testimony of the government's witnesses as to the value of the appraised value of that property on April 11, 1948 and accordingly the court has directed that judgment be entered in favor of the land owners in the amounts testified to by the government's appraisers. In other words, the court is of the view that you had no evidence before you upon which you could properly have found any other judgment or any verdict other than that based upon the testimony of the government's witnesses; that being the case, it is the responsibility of the court to direct a verdict without further consideration by the jury. The jury is, therefore, discharged and you are asked to report at 9:30 next Monday

morning. I thank you very much for your attendance and the careful consideration you took during this case. The jury is discharged. The court will adjourn until further notice.

(Jury discharged at 9:45 a.m.) [75]

District Court of Guam,
Territory of Guam—ss.

I, Maria A. Atoigue, Official Court Reporter for the District Court of Guam, hereby certify that the above and foregoing is a true and correct transcript of the proceedings had in the above-entitled matter had in the said court at the time and place as set forth.

/s/ MARIA A. ATOIGUE,
Official Court Reporter. [76]

[Endorsed]: No. 15813. United States Court of Appeals for the Ninth Circuit. Manuel C. Blas, and The Estate of Jose Martinez Torres, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the District Court of Guam, Territory of Guam.

Filed: November 21, 1957.

Docketed: December 11, 1957.

Reporter's Transcript Filed: March 31, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In The United States Court of Appeals
For The Ninth Circuit

No. 15813

380,438 Square Meters of Land, more or less, in
the Municipality of Barrigada, Island of Guam,
Marianas Islands, and the Estate of Antonio
Ingay Bayona, deceased, et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT BY APPELLANTS OF POINTS
ON WHICH THEY INTEND TO RELY

Appellants, above-named, state that the points on
which they intend to rely on the appeal in this
action are as follows:

1. The trial court erred in granting Plaintiff's
Motion for Directed Verdict, instead of submitting
the case to the jury, there being substantial and
relevant facts presented for the jury to decide;

2. The trial court erred in denying Defendants-
Appellants' Motion to Set Aside Order and Judg-
ment For New Trial.

Dated 3rd December, 1957.

REYES & LAMORENA,

/s/ By ALBERTO T. LAMORENA,

Attorneys for Appellants Manuel C. Blas and the
Estate of Jose Martinez Torres, Deceased.

Acknowledgment of Service Attached.

[Endorsed]: Filed December 9, 1957. Paul P.
O'Brien, Clerk.

